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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.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–025N]

9 CFR Parts 301, 309, 310, 311, 313, 318, 319 and 320

Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle; Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery (AMR) Systems; Prohibition of the Use of Certain Stunning Devices Used To Immobilize Cattle During Slaughter; Bovine Spongiform Encephalopathy (BSE) Surveillance Program

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and request for comment on preliminary regulatory impact analysis; extension of comment period for interim rules.

SUMMARY: The Food Safety and Inspection Services (FSIS) is announcing the availability of, and requesting public comment on, its preliminary regulatory impact analysis (PRIA) of three interim rules and a notice issued by the Agency in the **Federal Register** on January 12, 2004, in response to the detection of a case of BSE in the United States. The Agency is also extending the comment period for the three interim final rules issued on that date so that the closing date of that comment period coincides with the closing date of the comment period for the PRIA.

DATES: Comments on the interim final rules issued on January 12, 2004, and the PRIA are due May 7, 2004.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions at that site for submitting comments.

All submissions received must include the Agency name and docket number 01–003P or Regulatory Information Number (RIN) 0583–AC87.

All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm*.

FOR FURTHER INFORMATION CONTACT: Dr. Quita Bowman, Director, Directives and Economic Analysis Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 690–0486.

SUPPLEMENTARY INFORMATION:

On January 12, 2004, FSIS published three interim final rules (69 FR 1862, 1874, and 1885) and a notice (69 FR 1892) in the **Federal Register** in response to the diagnosis on December 23, 2003, by the U.S. Department of Agriculture of a positive case of BSE in an adult Holstein cow in the state of Washington (*see* ''Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle'' (69 FR 1862); ''Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery (AMR) Systems'' (69 FR 1874); ''Prohibition of the Use of Certain Stunning Devices Used To Immobilize Cattle During Slaughter'' (69 FR 1885); and ''Bovine Spongiform Encephalopathy Surveillance Program'' (69 FR 1892)). The Final rules promulgated by these documents are intended to prevent human exposure to materials that scientific studies have demonstrated contain the BSE agent in cattle infected with BSE. Scientific and epidemiological studies have linked the fatal human disease, variant Creutzfeldt Jakob Disease (vCJD) to exposure to BSE, probably through human consumption of beef products contaminated with the agent that causes this disease.

Most of the tissues in which BSE infectivity has been confirmed have demonstrated infectivity before cattle infected under experimental conditions developed clinical signs of disease. Thus, when the cow in Washington State tested as positive for BSE on December 23, 2003, FSIS determined that immediate action was necessary to ensure that materials that could present a significant risk to human health, but whose infectivity status cannot be readily ascertained, were excluded from the human food supply. Therefore, the interim final rules described above were issued on an emergency basis and became effective immediately upon publication. In the preamble to those rule, FSIS explained that it had determined that prior notice and opportunity for public comment were contrary to the public interest, and that there was good cause under 5 U.S.C. 553 for making the rules effective less than 30 days after publication in the **Federal Register** (69 FR 1871, 1883, 1889).

Executive Order 12866 and Regulatory Flexibility Act

The interim final rules issued on January 12, 2004, were reviewed under Executive Order 12866 and two of them, ''Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle'' (69 FR 1862) and ''Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery (AMR) Systems'' (69 FR 1874), were determined to be economically significant for purposes of that executive order. However, as stated in the preamble to the rules, the emergency situation giving rise to the rulemakings made timely compliance with Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. Therefore, these interim final rules did not include analyses of costs or benefits of the rule or the effects of the rule on small businesses.

However, in the preamble to those rules, FSIS stated that when the Agency completed assessment of the potential

economic effects of the rules, the Agency would publish a notice of availability in the **Federal Register** and would provide an opportunity for public comment (69 FR 1871, 1883). Consistent with these statements, FSIS is now announcing the availability of the PRIA of these interim final rules (which also includes an analysis of the effects of the other interim final rule and the notice published in the **Federal Register** on January 12, 2004) and is providing the public 30 days on which to comment on the analysis.

In addition to announcing the availability of the PRIA, FSIS is also extending the comment period for all of the interim final rules issued on January 12, 2004, so that the comment period for these rules and the PRIA will close on the same day.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that the public, and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done in Washington, DC, on: April 2, 2004.

Philip S. Derfler,

Acting Administrator.

[FR Doc. 04–7925 Filed 4–5–04; 11:15 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM275; Special Conditions No. 25–258–SC]

Special Conditions: Gulfstream Model GIV–X Airplane; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Model GIV–X airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with new or modified flight control systems, including the yaw damper and hard-over prevention system, that affect the structural performance of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these systems and their effect on structural performance. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the applicable airworthiness standards.

DATES: The effective date of these special conditions is March 29, 2004. Comments must be received on or before May 7, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, Attention: Rules Docket (ANM–113), Docket No. NM275, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM275. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1178; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable, because these procedures would significantly delay certification and, thus, delivery of the airplane. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On August 22, 2000, Gulfstream applied for an amendment to Type Certificate No. A12EA to include an updated version of the Model GIV airplane. The Model GIV–X, which is a derivative of the GIV airplane currently approved under Type Certificate No. A12EA, is a pressurized, low-wing, ''T'' tail transport category airplane with tricycle landing gear. It is powered by two Rolls-Royce model Tay 611–8C engines and will carry a maximum of 19 passengers.

The primary differences between the existing GIV and the new GIV–X are the installation of an advanced avionics and flight deck display suite, airframe aerodynamic changes to increase performance, range and economics, derivative Tay 611–8C engines with GV nacelles and thrust reversers, and a new Full Authority Digital Engine Control (FADEC). Additionally, the GIV–X includes a modified yaw damper and a new hard-over prevention system (HOPS) which serve to alleviate loads in the airframe but, when in a failure state, can create loads in the airframe. The current regulations do not adequately account for the effects of these systems and their failures on structural performance. These special conditions will require Gulfstream to substantiate the strength capability and freedom from aeroelastic instabilities after failures in yaw damper and HOPS systems.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Gulfstream must show that the Model GIV–X airplane meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A12EA are 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–56, except for the following sections which are limited to showing compliance with the amendments indicated: part 25 effective February 1, 1965, § 25.109, 25.571, and 25.813; part 25 Amendment 25–22, § 25.571; and part 25 Amendment 25–15, § 25.807(c)(2). In addition, the certification basis includes certain special conditions, exemptions, and equivalent safety findings that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model GIV–X airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model GIV–X airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Feature

The Model GIV–X airplane will have systems that affect the structural performance of the airplane, either directly or as a result of a failure or malfunction. These novel or unusual design features are systems that can serve to alleviate loads in the airframe but, when in a failure state, can create loads in the airframe. The current regulations do not adequately account for the effects of these systems and their failures on structural performance. These special conditions provide the criteria to be used in assessing the effects of these systems on structures.

Conclusion

This action affects only certain novel or unusual design features on the Gulfstream Model GIV–X airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Interaction of Systems and Structure

1. *General.* For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of subparts C and D of part 25. The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

(a) The criteria defined herein only address the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in these special conditions.

(b) Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in these special conditions may be required in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions, for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to these special conditions.

Structural performance. Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (*e.g.,* speed limitations, avoidance of severe weather conditions. etc.).

Operational limitations: Limitations, including flight limitations that can be applied to the airplane operating conditions before dispatch (*e.g.,* fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309; however, these special conditions apply only to system failure conditions that affect the structural performance of the airplane (*e.g.,* system failure conditions that induce loads, lower flutter margins, or change the response of the airplane to inputs such as gusts or pilot actions).

2. *Effects of Systems on Structures.* The following criteria will be used in

determining the influence of a system and its failure conditions on the airplane structure.

(a) *System fully operative.* With the system fully operative, the following apply.

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C, taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

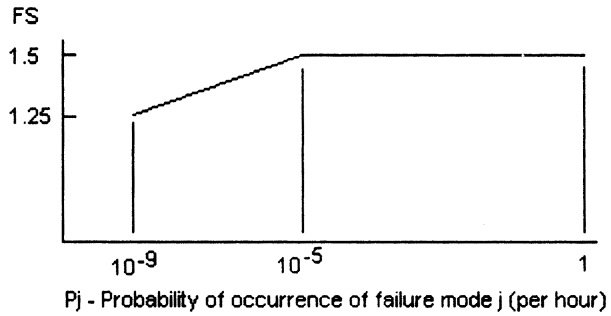
(b) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *At the time of occurrence.* Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (b)(1)(i) above.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond Vc/Mc, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) *For the continuation of the flight.* For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to Vc, or the speed limitation prescribed for the remainder of the flight, must be determined:

(A) The limit symmetrical maneuvering conditions specified §§ 25.331 and 25.345.

(B) The limit gust and turbulence conditions specified in §§ 25.341 and 25.345.

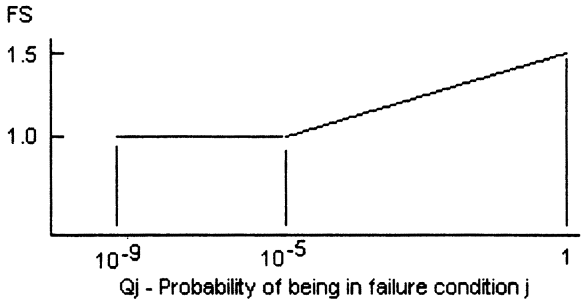
(C) The limit rolling conditions specified in § 25.349, and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in §§ 2.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads defined in paragraph (2)(i) above, multiplied by a factor of safety depending on the probability of being in this failure state. the factor of safety is defined in Figure 2.

Figure 2
Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j (in hours).
P_j = Probability of occurrence of failure mode j (per hour).

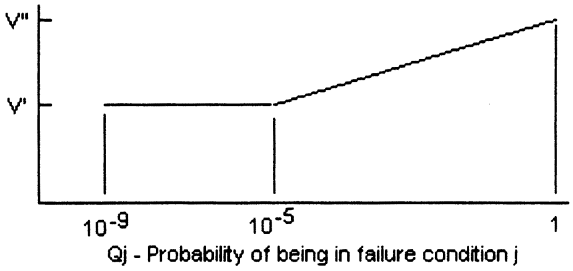
Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (2)(ii) above.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V^I and V^{II} may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3
Clearance speed



V^I = Clearance speed as defined by § 25.629(b)(2).
V^{II} = Clearance speed as defined by § 25.629(b)(1).
$Q_J = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j (in hours).
P_j = Probability of occurrence of failure mode j (per hour).

Note: (If P_J is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V^{II}

(vi) Freedom from aeroelastic instability must also be shown up to V^I in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of part 25, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{2-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(c) *Warning considerations.* For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25, or significantly reduce the reliability of the remaining system. The flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems, to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V^{II}, must be signaled to the crew during flight.

(d) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain

structural performance, then the provisions of these special conditions must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

Issued in Renton, Washington, on March 29, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7877 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–47–AD; Amendment 39–13566; AD 2004–07–22]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (ADs), applicable to all Boeing Model 747 series airplanes, that currently require that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each structural significant item, and repair of cracked structure. Those ADs were prompted by a structural re-evaluation that identified additional structural elements where, if damage were to occur, supplemental inspections may be required for timely detection of fatigue cracking. This amendment requires additional and expanded inspections, and repair of cracked structure. This action also expands the applicability of the existing ADs to include additional airplanes. The actions specified by this AD are intended to ensure the continued structural integrity of the entire fleet of Model 747 series airplanes. This action is intended to address the identified unsafe condition.

DATES: Effective May 12, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 12, 2004.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 12, 1994 (59 FR 41233, August 11, 1994) and August 10, 1994 (59 FR 37933, July 26, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, 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: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–15–12, amendment 39–8983 (59 FR 37933, July 26, 1994), and AD 94–15–18, amendment 39–8989 (59 FR 41233, August 11, 1994), which are applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on March 12, 2003 (68 FR 11764). The NPRM proposed to continue to require that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating (DTR) for each structural significant item, and repair of cracked structure. The NPRM also proposed to require additional and expanded inspections, and repair of cracked structure. Additionally, the NPRM also proposed to expand the applicability of the existing ADs to include additional airplanes.

Definitions

For the purposes of the discussions following in the "Comments'' section of this AD, references to Boeing Document No. D6–35022, "Supplemental Structural Inspection Document,'' (SSID) for Model 747 Airplanes, Revision G, dated December 2000, are referred to as "Revision G.''

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Allow Training Flights Equivalent

Two commenters request that two training flights be considered equivalent to one revenue flight for all Structural Significant Items (SSIs), except SSIs F–46, F–49, F–50, F–51, W–3, S–1, S–2, and E–1 through E–10. One of the commenters, the manufacturer, states that analyses show that for all SSIs, except for the above excluded SSIs, fatigue damage accumulated during a touch-and-go training flight conducted at less than 2.0 pounds per square inch (psi) internal cabin pressure is significantly less than half of the fatigue damage accumulated on a typical revenue flight.

The FAA does not concur with the commenters' request. In this case, we do not consider it appropriate to include various provisions in an AD applicable to a unique use of an affected airplane. We have determined that for clarity of the final rule, such a request is best evaluated through submitting a request for alternative methods of compliance as provided for in paragraph (h)(1) of this AD.

Request To Extend the Repetitive Intervals

One commenter, an operator, notes that paragraph (c) of the NPRM does not allow the provisions to increase task repetitive intervals by 10%, as specified in paragraph 5.1.8 of Revision G. The commenter requests that such provisions be allowed to accommodate unanticipated scheduling requirements similar to the provisions allowed in the Corrosion Prevention and Control Program (CPCP) required by AD 90–25–05, amendment 39–6790, (55 FR 49268, November 27, 1990).

We do not agree that the repetitive inspection interval may be increased up to 10% without further evaluation. Any unsubstantiated increases in the task repetitive intervals may not maintain the level of safety this AD requires. The task repetitive intervals in Revision G are based on the assumption that the entire Boeing Model 747 fleet is inspected at a minimum with the required DTR prescribed in the document. Therefore, any unsubstantiated increases in the task repetitive intervals will lower the

corresponding DTR to below the minimum required, which may invalidate the methodology employed in the inspection program. However, we do agree that, on a case-by-case basis, the repetitive inspection interval, which may include interim instructions, may be extended to accommodate unanticipated scheduling requirements. We will consider requests for adjustment of the compliance time that maintains an acceptable level of safety per paragraph (h)(1) of this AD.

Requests To Revise the Cost Impact

One commenter requests that a more extensive cost breakdown be provided. The commenter states that the cost of complete repetition of the whole SSID program for every D–Check is not included in the cost estimates of the NPRM. The commenter concludes, therefore, that it will require more than three times the number of work hours specified in the NPRM to perform the SSID program completely. A second commenter states that, based on its experience, it takes approximately 3,500 work hours per airplane to accomplish the initial inspection of all SSIs during a D–Check and 6,600 work hours per airplane during a C-Check. The second commenter also points out that it would require additional ground time to accomplish the inspections to ensure the availability of non-destructive testing (NDT) inspectors and because of the maintenance limitations during the x-ray inspections. The second commenter also notes that further costs would be incurred because the additional ground time would reduce airplane utilization.

We acknowledge that the cost estimate of work hours specified in the NPRM may be too low. Based on the commenters' information and experience and the fact that approximately 25% of the airplanes will be able to accomplish the initial inspection during a D–Check, we agree to increase the estimated work hours to accomplish the inspections from 1,275 to 5,825 work hours. We point out, however, that the compliance time specified in this AD should allow ample time for the inspections to be accomplished at the same time as scheduled inspections and maintenance for the majority of affected operators, which will minimize the costs associated with special airplane scheduling. We provide the cost estimate of a single inspection cycle because there is no way to accurately project how many repetitive inspections would be necessary for all affected airplanes. Clearly, based on the "life'' of each affected airplane, the number of required repetitive inspections would vary.

We recognize that this AD will take many work hours to accomplish, and we acknowledge that maintaining airplanes in an airworthy condition is vital, but sometimes expensive. ADs require specific actions to address specific unsafe conditions and consequently may appear to impose costs that would not otherwise be borne by operators. However, because operators have a general obligation to maintain their airplanes in an airworthy condition, this appearance is deceptive. Attributing those costs solely to this AD is unrealistic because, in the interest of maintaining safe airplanes, prudent operators would accomplish these actions even if they were not required by the AD. We cannot provide a further break-down of costs, since the commenter did not provide such information, and we have not received any additional cost information from any other source.

Request To Revise Paragraph (e) of the NPRM

One commenter, the manufacturer, requests that we revise paragraph (e) of the NPRM to provide authorization for Boeing Designated Engineering Representatives (DERs) to approve repair methods. The commenter suggests the following rewrite:

"(e) Damage found during any inspection required by this AD shall be repaired prior to further flight per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.''

We acknowledge that authorization to approve repairs may be delegated to certain Boeing DERs. However, we do not agree to replace the wording in paragraph (e) of this AD that specifies repairing the structure per an FAA-approved method. Repairs approved by Boeing DERs with an FAA Form 8110–3 are, by definition, "FAA-approved.'' This AD also allows use of other FAA-approved repairs, including repairs described in the Boeing Structural Repair Manual and repairs approved by other qualified DERs. Therefore, no change is necessary to the AD to allow approval by an authorized Boeing Company Designated Engineering Representative.

Request To Clarify Requirements of Section 6.0 of Revision G

One commenter requests that the NPRM be clarified to state that Section 6.0, "SSI Discrepancy Reporting'' is also a requirement. The commenter also requests that we include the section number in paragraph (c) of the NPRM that is being referred to, because paragraph 5.3 of Revision G does not refer to "Damage Tolerant Rating (DTR) System Application.'' Additionally, the commenter requests that the sections be stated in sequential order as they appear in Revision G. The commenter believes that Section 6.0 should be clearly stated in the requirements, since many of the affected airplanes are not of U.S. registry and would not be required to provide mechanical reliability reports under CFR part 121.703.

We agree that clarification is necessary and have revised paragraph (c) of the AD to specify that revision of the maintenance or inspection program shall include and shall be implemented per the procedures in Section 5.0, "Damage Tolerance Rating (DTR) System Application,'' and Section 6.0, "SSI Discrepancy Reporting'' of Revision G, excluding paragraphs 5.1.2; 5.1.6, item 5; 5.1.8; 5.2; 5.2.1; 5.2.2; 5.2.3; and 5.2.4.

However, since the "DTR System Application'' is the subject of all of Section 5.0, we do not consider it to be an issue with labeling and sequencing of the paragraphs of Section 5.0 of Revision G. No change to the AD is necessary in this regard.

Request To Clarify Paragraph (c) of the NPRM

One commenter requests clarification on whether phased inspections are permitted under the requirements of paragraph (c) of the NPRM. The commenter acknowledges that the NPRM does exclude paragraph 5.2 of Revision G; however, paragraph 5.1.11 is included in the NPRM and that paragraph refers back to paragraph 5.2 of Revision G. The commenter notes that paragraph 5.1.11 states, in part, "* * * inspections shall be accomplished at frequency F but not necessarily on 100 percent of the operator's affected fleet.'' The commenter states that it believes that the goal is to move away from a sample-based approach to a threshold-based approach to be consistent with other Boeing airplane models.

We agree that it is necessary to clarify that phased inspections are not permitted. We have added a new Note 4 to the AD clarifying that, even though paragraph 5.2 of Revision G is referenced in paragraph 5.1.11,

paragraph 5.2 is still excluded as a method of compliance with the requirements of this AD.

Requests To Revise the Initial Inspection Compliance Time

Several commenters suggest using alternative compliance time schedules. Two commenters state that the compliance time specified in the NPRM does not reflect the existing candidate fleet program for damage tolerance based inspections that has been in place for 19 years. One commenter believes that the proposed actions specified in the NPRM are an exploratory effort to detect unknown cracking. Further, the commenter states that the thresholds and intervals specified in the Supplemental Structural Inspection Program (SSIP) are purely analytical and do not reflect the fact that the candidate fleet inspection program has been providing real data feedback. Another commenter expressed agreement with these comments. Several commenters believe that the compliance time for the transition from the current candidate fleet program to the threshold based program specified in the NPRM can be phased in over a longer period of time. One of the commenters considers the compliance times in the NPRM to be too stringent. Another commenter suggests that since it has accomplished the SSID inspections on 22 airplanes and has found only known defects, the compliance time can be extended longer than 1,000 flight cycles. Yet another commenter states that the grace period would impose significant costs and scheduling difficulties on operators because many of the specified inspections are scheduled similar to D–Check inspections.

We do not agree with the commenters' requests to extend the compliance times. The SSIP is based on a certain probability that cracking will be found on the inspected fleet before the cracking initiates in other airplanes that have not been inspected. High-cycle airplanes in the fleet are more likely to experience initial fatigue damage. The current candidate fleet approach has resulted in a statistically invalid number of airplanes being inspected; therefore, we do not concur that an extended phase-in period for initial inspection of high-cycle airplanes provides an acceptable level of safety. As mentioned in the preamble of the NPRM, the threshold required by the existing AD for the candidate fleet is much lower, 12,000 total flight cycles for Model 747SR and 10,000 total flight cycles for Model 747–100 and –200 series airplanes, than that specified in this AD. Additionally, the commenters do not provide any statistical information on how the participation level of the current SSID candidate program provides an acceptable level of safety. Therefore, no change to the final rule is necessary regarding the specified compliance times.

Requests To Inspect a Sample of the Fleet

Several commenters request that a percentage of the fleet, as specified in the DTR form, be inspected at a maximum interval specified by the D–Check maintenance schedule. The commenters state that paragraph 5.1.11 of Revision G establishes a D–Check maximum frequency be applied to a percentage of an operator's fleet, depending upon the DTR. Removing the percent sampling while maintaining the D–Check maximum frequency, results in unnecessarily forcing repeat inspections at shorter intervals than that indicated by the DTR form.

We do not agree. For reasons discussed in the NPRM and earlier in this preamble, we have considered the candidate fleet approach and have moved to a threshold approach. In doing so, we require inspections of all SSIs when the threshold has been reached. Only inspecting a sample of SSIs where the damage tolerance rating (DTR) provides an interval greater than a D–Check would not provide an acceptable level of safety. If operators wish to request an adjustment to the compliance time, they may do so according to the provisions specified in paragraph (h)(1) of this AD. Such requests should include a new proposed inspection interval and must include data to substantiate that such an adjustment would provide an acceptable level of safety. No change is necessary to the final rule in this regard.

Requests To Remove the D–Check Cap

Several commenters request that we remove the proposed requirement to perform all applicable SSID tasks on every airplane at the maximum interval of a D–Check or equivalent time, as specified in paragraph 5.1.11 of Revision G. One commenter states that such a requirement creates an undue burden for the operator because more inspections would have to be performed than if performed under the technical requirements of the SSID program where sampling is permitted. Another commenter asserts that such a requirement does not conform to other analytical methods to define a necessary inspection interval. The commenter asserts that the D–Check capping requirement would lead to a significant burden for operators that have a shorter interval at the fourth, fifth, and subsequent D–Checks. One commenter poses the following condition as an example: The 5th D–Check is equivalent to approximately 2,500 flight cycles. The SSID estimates that a D–Check is approximately 6,000 flight cycles. Therefore, it is the commenter's understanding that the inspection interval could be increased for some SSID items to higher intervals than the intervals of the D–Check, without decreasing the level of safety below the required DTR. The commenter also states that, by increasing the inspection interval and removing the sampling concept at the same time, the entire SSID program will be easier to incorporate, understand, and track. Further, the commenter asserts that cost reduction can be achieved by omitting certain inspections that are not necessary at each D–Check. Another operator states that the proposed requirement will require operators to repeat some inspections unnecessarily.

We do not agree with removing the D–Check cap from the AD. The D–Check cap will provide confidence in the existing analytical methods by providing more than one inspection on SSIs with long repetitive intervals. One-time inspections at a threshold do not give the confidence that cracking will not develop on aging airplanes that have accumulated flight cycles beyond the design service objective (DSO). However, for operators that have shorter intervals for their later D–Checks, we will consider requests for alternative methods of compliance (AMOCs) in accordance with paragraph (h)(1) of this AD.

Request To Redefine SSI

One commenter, the manufacturer, requests that the definition of SSI as specified in the NPRM be redefined from "principal structural element,'' to a "principal structural element as listed in Revision G of the SSID D6–35022.''

We do not agree. Revision G defines an SSI as a principal structural element (PSE). Further, Revision G of the SSID does not say that an SSI is a "principal structural element as listed in Revision G.'' No change to the final rule is necessary in this regard.

Request To Redefine PSE

One commenter, an operator, requests that the definition of a PSE in Note 3 of the NPRM be revised to read: "Any detail, element, or assembly, which contributes significantly to the carrying of flight, ground, pressurization or control loads and whose failure could affect the structural integrity necessary for the safety of the aircraft.'' The

commenter points out that there are many published definitions of PSE, and that confusion may occur as a result. The commenter requests that we provide one consistent definition and considers that the definition used in the Maintenance Steering Group 3 (MSG 3), Revision 2b, to be the industry standard definition. The commenter also notes that Boeing Model 747 series airplanes have recently been subject to a MSG 3, Revision 2b program review.

We do not agree with the commenter's request. We consider that the definition provided in Advisory Circular 25.571–1C, dated April 29, 1998, to be the standard, and that is the definition provided in this AD.

Request To Revise Compliance Times of Parts Replaced With New Structures

One commenter, an operator, requests that we add paragraph 5.1.17 of Revision G to the paragraphs that are excluded from the requirements of paragraph (c) of the NPRM, or that Boeing change paragraph 5.1.17 of Revision G to specify 20,000 flight cycles or 10,000 flight cycles from part replacement, whichever is later. The commenter notes that paragraph 5.1.17 of Revision G refers to the inspection requirements for the portion of an SSI that has been replaced with new structure, and that the inspection may be deferred until a new threshold of 10,000 flight cycles are accumulated. The commenter states that, in some cases, the replaced structure would have to be inspected prior to the threshold specified in the NPRM. The commenter points out that the 10,000 flight cycle threshold is consistent with the requirements of AD 94–15–12, since the inspections are required to begin upon the accumulation of 10,000 total flight cycles for airplanes in the candidate fleet.

We acknowledge the commenter's position and recognize that clarification is necessary. It is not our intent to have operators inspect replaced structure prior to the threshold of the AD. To clarify that intent, we have revised paragraph (d) of the AD by adding paragraph (d)(3) to the AD to specify that, for the portion of an SSI that has been replaced with new structure, the inspections can be deferred until the later of the times specified in paragraph (d)(3)(i) or (d)(3)(ii) of the AD, as applicable. We have added this clarification to paragraph (d) of the AD, since it also includes compliance times for wing structure and all other structures. Additionally, clarifying paragraph (d) of the AD will prevent time lost in issuance of the AD due to a delay in having Boeing revise and republish Revision G.

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

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

Cost Impact

There are approximately 1,000 airplanes of the affected design in the worldwide fleet.

The FAA estimates that 87 airplanes of U.S. registry are currently affected by the actions that are currently required by AD 94–15–12 and AD 94–15–18. We estimate that it takes approximately 1,000 work hours per airplane to accomplish, at an average labor rate of $65 per work hour to accomplish those actions. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $5,655,000, or $65,000 per airplane, per inspection cycle.

We estimate that 181 airplanes of U.S. registry are affected by this AD. The new actions that are required by this new AD will take approximately 5,825 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $68,531,125, or $378,625 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The number of work hours, as indicated above, is presented as if the accomplishment of the actions in this AD are to be conducted as "stand alone'' actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action'' under Executive Order 12866; (2) is not a "significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendments 39–8983 (59 FR 37933, July 26, 1994) and 39–8989 (59 FR 41233, August 11, 1994), and by adding a new airworthiness directive (AD), amendment 39–13566, to read as follows:

2004–07–22 Boeing: Amendment 39–13566. Docket 2003–NM–47–AD. Supersedes AD 94–15–12, amendment 39–8983, and AD 94–15–18, amendment 39–8989.

Applicability: All Model 747 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance per paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continued structural integrity of the entire fleet of Model 747 series airplanes, accomplish the following:

Note 2: Where there are differences between this AD and the Supplemental Structural Inspection Document (SSID) specified in this AD, the AD prevails.

Inspection Program Required by AD 94–15–12

(a) For Model 747–100SR series airplanes having line numbers 346, 351, 420, 426, 427, and 601: Within 1 year after August 10, 1994 (the effective date of AD 94–15–12, amendment 39–8983), incorporate a revision into the FAA-approved maintenance inspection program that provides no less than the required damage tolerance rating (DTR) for each structural significant item (SSI) listed in Boeing Document No. D6–35655, ''Supplemental Structural Inspection Document (SSID) for 747–100SR,'' dated April 2, 1986. The revision to the maintenance program must include and be implemented per the procedures specified in Sections 5.0 and 6.0 of the SSID D6–35655. Revision to the maintenance program shall be per the SSID D6–35655, dated April 2, 1986, until Revision G of the SSID D6–35022 is incorporated into the FAA-approved maintenance or inspection program per the requirements of paragraph (c) of this AD.

Note 3: For the purposes of this AD, an SSI is defined as a principal structural element (PSE). A PSE is a structural element that contributes significantly to the carrying of flight, ground, or pressurization loads, and whose integrity is essential in maintaining the overall structural integrity of the airplane.

Inspection Program Required by AD 94–15–18

(b) For airplanes listed in Boeing Document No. D6–35022, Volumes 1 and 2, ''Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes,'' Revision E, dated June 17, 1993; and manufacturer's line numbers 42, 174, 221, 231, 234, 239, 242, and 254: Within 12 months after September 12, 1994 (the effective date of AD 94–15–18, amendment 39–8989), incorporate a revision into the FAA-approved maintenance inspection program that provides no less than the required DTR for each SSI listed in Boeing Document No. D6–35022, Volumes 1 and 2, ''Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes,'' Revision E, dated June 17, 1993. Revision F, dated May 1996, is acceptable for compliance with this paragraph. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include Sections 5.0 and 6.0 of the SSID D6–35022 and shall be implemented per the procedures contained in those sections. Revision to the maintenance program shall be per Revision E or F of SSID D6–35022, until Revision G of the SSID D6–35022 is incorporated into the FAA-approved maintenance or inspection program per the requirements of paragraph (c) of this AD.

New Inspection Program Requirements

(c) For all Model 747 series airplanes: Prior to reaching either of the thresholds specified in paragraph (d)(1)(i) or (d)(2)(i) of this AD, or within 12 months after the effective date of this AD, whichever occurs later, incorporate a revision into the FAA-approved maintenance or inspection program that provides no less than the required DTR for each SSI listed in Boeing Document No. D6–35022, ''Supplemental Structural Inspection Document,'' Revision G, dated December 2000 (hereinafter referred to as ''Revision G''). (The required DTR value for each SSI is listed in Revision G.) The revision to the maintenance or inspection program shall include and shall be implemented per the procedures in Section 5.0, ''DTR System Application'' and Section 6.0, ''SSI Discrepancy Reporting'' of Revision G, excluding paragraphs 5.1.2; 5.1.6, item 5; 5.1.8; 5.2; 5.2.1; 5.2.2; 5.2.3; and 5.2.4 of Revision G. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements (Section 6.0, ''SSI Discrepancy Reporting'') contained in this AD and has assigned OMB Control Number 2120–0056. Upon incorporation of Revision G required by this paragraph, the revision required by either paragraph (a) or (b) of this AD, as applicable, may be removed.

Note 4: Operators should note that, although paragraph 5.2 is referenced in paragraph 5.1.11 of Revision G, paragraph 5.2 is excluded as a method of compliance with the requirements of this AD.

Initial Inspection

(a) For all Model 747 series airplanes: Perform an inspection to detect cracks of all structure identified in Revision G of SSID D6–35022 at the time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable.

(1) For wing structure: At the times specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD, whichever occurs later.

(i) Prior to the accumulation of 20,000 total flight cycles or 100,000 total flight hours, whichever comes first. Or,

(ii) Within 1,000 flight cycles measured from 12 months after the effective date of this AD.

(2) For all other structure: At the times specified in paragraph (d)(2)(i) or (d)(2)(ii) of this AD, whichever occurs later.

(i) Prior to the accumulation of 20,000 total flight cycles, or

(ii) Within 1,000 flight cycles measured from 12 months after the effective date of this AD.

(3) For any portion of an SSI that has been replaced with new structure: At the later of the times specified in paragraph (d)(3)(i) or (d)(3)(ii) of this AD.

(i) At the times specified in either paragraph (d)(1) or (d)(2) of this AD, as applicable, or

(ii) Within 10,000 flight cycles after the replacement of the part with a new part.

Note 5: Notwithstanding the provisions of paragraphs 5.1.2, 5.1.6, item 5, 5.2, 5.2.1, 5.2.2, 5.2.3, and 5.2.4 of the General Instructions of Revision G, which would permit operators to perform fleet and rotational sampling inspections to perform inspections on less than whole airplane fleet sizes and to perform inspections on substitute airplanes, this AD requires that all airplanes that exceed the threshold be inspected per Revision G. Although paragraph 5.1.8 of Revision G allows provisions for touch-and-go training flights, fleet averaging, and 10% escalations of flight cycles to achieve the required DTR, this AD does not allow for those provisions.

Note 6: Once the initial inspection has been performed, operators are required to perform repetitive inspections at the intervals specified in Revision G in order to remain in compliance with their maintenance or inspection programs, as revised per paragraph (c) of this AD.

Repair

(e) Cracked structure found during any inspection required by this AD shall be repaired, prior to further flight, in accordance with an FAA-approved method.

Inspection Program for Transferred Airplanes

(f) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (d) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established per paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For airplanes that have been inspected per this AD, the inspection of each SSI must

be accomplished by the new operator per the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected per this AD, the inspection of each SSI required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or per a schedule and an inspection method approved by the Manager, Seattle ACO. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously per AD 94–15–12, amendment 39–8983, are approved as alternative methods of compliance with paragraphs (a) and (e) of this AD.

(3) Alternative methods of compliance, approved previously per AD 94–15–18, amendment 39–8989, are approved as alternative methods of compliance with paragraphs (b) and (e) of this AD.

(4) Alternative methods of compliance, approved previously per AD 94–15–18 and AD 94–15–12 that provide alternative inspections are approved as alternative methods of compliance for the inspections of that area only in this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued per sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Document No. D6–35655, ''Supplemental Structural Inspection Document for 747–100SR,'' dated April 2, 1986; Boeing Document No. D6–35022, Volumes 1 and 2, ''Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes,'' Revision E, dated June 17, 1993; and Boeing Document No. D6–35022, ''Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes,'' Revision G, dated December 2000; as applicable.

(1) The incorporation by reference of Boeing Document D6–35022, ''Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes,'' Revision G, dated December 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document contains the following effective pages:

Revision level page number	Shown on page
List of Effective Pages. Pages A.1 thru A.10	G

(The issue date of Revision G is indicated only on the title page; no other page of the document is dated.)

(2) The incorporation by reference of Boeing Document No. D6–35022, Volumes 1 and 2, ''Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes,'' Revision E, dated June 17, 1993, was approved previously by the Director of the Federal Register as of September 12, 1994 (59 FR 41233, August 11, 1994).

(3) The incorporation by reference of Boeing Document No. D6–35655, ''Supplemental Structural Inspection Document for 747–100SR,'' dated April 2, 1986, was approved previously by the Director of the Federal Register as of August 10, 1994 (59 FR 37933, July 26, 1994).

(4) Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

Effective Date

(j) This amendment becomes effective on May 12, 2004.

Issued in Renton, Washington, on March 24, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7449 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 606, and 610

[Docket No. 2002N–0204]

Bar Code Label Requirement for Human Drug Products and Biological Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of February 26, 2004 (69 FR 9120). The document included typographical and inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy and Planning (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0587.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–4249, appearing on page 9120 in the **Federal Register** of Thursday, February 26, 2004, the following corrections are made:

■ 1. On page 9151, in the third column, the first sentence of the first full paragraph, is corrected to read ''We estimate that the rule provides net benefits to society of $4.3 billion to $4.5 billion annually, depending on whether a discount rate of 3 percent or 7 percent is used.''

■ 2. On page 9167, in the first column, the first sentence under the heading ''*P. Small Business Analysis and Discussion of Alternatives*'' is corrected to read ''For the reasons cited in the following paragraphs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.''

Dated: March 31, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7815 Filed 4–6–04; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0257; FRL–7351–4]

Mesosulfuron-Methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of mesosulfuron-methyl in or on wheat. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective April 7, 2004. Objections and requests for hearings, identified by docket ID

number OPP–2003–0257, must be received on or before June 7, 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 VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., Agricultural workers; Greenhouse, nursery, and floriculture workers; Farmers.
- Animal production (NAICS 112), e.g., Cattle ranchers and farmers, Dairy cattle farmers, Livestock farmers.
- Food manufacturing (NAICS 311), e.g., Agricultural workers; Farmers; Greenhouse, nursery, and floriculture workers; Ranchers; Pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., Agricultural workers; Commercial applicators; Farmers; Greenhouse, nursery, and floriculture workers; Residential users.

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–2003–0257. 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 (PIRI), 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 on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm/*.

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

II. Background and Statutory Findings

In the **Federal Register** of October 22, 2003 (68 FR 60378) (FRL–7322–5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 1F6298) by Bayer CropScience, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. That notice included a summary of the petition prepared by Bayer CropScience, the registrant. One comment was received in response to the notice of filing from a private citizen.

The petition requested that 40 CFR 180.428 be amended by establishing a tolerance for residues of the herbicide methyl 2-[[[[(4,6-dimethoxy-2-pyrimidinyl) amino]carbonyl]amino]sulfonyl]-4-[[(methylsulfonyl)amino] methyl]benzoate, mesosulfuron-methyl, in or on the raw agricultural commodities wheat grain at 0.03, wheat forage at 0.60, wheat straw at 0.30, wheat hay at 0.06, wheat germ at 0.10, aspirated grain fractions at 0.25, and milled byproducts at 0.03 parts per million (ppm). EPA determined that the tolerance for aspirated grain fractions should be 0.60 ppm instead of 0.25 ppm as was proposed by the registrant based on the results of submitted residue studies. Further, based on the results of submitted studies of residues in animal commodities, EPA determined that a tolerance should be set for meat byproducts of cattle, goat, horse, and sheep at the limit of quantitation (LOQ) for the enforcement method, which is 0.01 ppm. EPA also determined that no tolerance is needed for milled byproducts because mesosulfuron does not concentrate in milled byproducts and, therefore, residues in milled byproducts are covered by the tolerance for wheat grain.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe.'' Section 408(b)(2)(A)(ii) of 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 FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this

action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of mesosulfuron-methyl on the raw agricultural commodities aspirated grain fractions at 0.60 ppm, meat byproducts of cattle, goat, horse, and sheep meat byproducts at 0.01 ppm, wheat forage at 0.60 ppm, wheat germ at 0.10 ppm, wheat grain at 0.03 ppm, wheat hay at 0.06 ppm, and wheat straw at 0.30 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by mesosulfuron-methyl are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—TOXICOLOGY PROFILE FOR MESOSULFURON-METHYL

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity rodents	NOAEL = 908/977 Male/Female (M/F) milligram/kilogram/day (mg/kg/day) LOAEL = not observed.
870.3100	90-Day oral toxicity rodents	NOAEL = 1,238.3/ 1,603.4 M/F mg/kg/day LOAEL = not observed.
870.3150	90-Day oral toxicity in nonrodents	NOAEL = 648/734 M/F mg/kg/day LOAEL = not observed.
870.3200	21/28-Day dermal toxicity	Study not required.
870.3250	90-Day dermal toxicity	Study not required.
870.3465	90-Day inhalation toxicity	Study not required.
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 1,000 mg/kg/day LOAEL = not observed Developmental NOAEL = 1,000 mg/kg/day LOAEL = not observed
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL = 1,000 mg/kg/day LOAEL = not observed Developmental NOAEL = 1,000 mg/kg/day LOAEL = not observed
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 1,175.2/ 1,387.6 M/F mg/kg/day LOAEL = not observed Reproductive NOAEL = 1,175.2/ 1,387.6 M/F mg/kg/day LOAEL = not observed Offspring NOAEL = 1,175.2/ 1,387.6 M/F mg/kg/day LOAEL = not observed
870.4100	Chronic toxicity rodents	NOAEL = 764/ 952 M/F mg/kg/day LOAEL = not observed.
870.4100	Chronic toxicity dogs	NOAEL = 155 M mg/kg/day LOAEL = 574 M mg/kg/day based on increased mucus secretion in the cardiac and fundic sections of the stomach of the males dogs (highest dose tested (HDT)) and chronic superficial gastritis (1/6).
870.4200	Carcinogenicity rats	NOAEL = 764/952 M/F mg/kg/day LOAEL = not observed. (no) evidence of carcinogenicity
870.4300	Carcinogenicity mice	NOAEL = 1,069.4/ 1,355.6 M/F mg/kg/day LOAEL = not observed. (no) evidence of carcinogenicity
870.5100 Gene Mutation	Bacterial reverse mutation assay	Negative ± S9 up to cytotoxic 5,000 μgram (g)/milliliter (ml) plate
870.5300 Gene Mutation	Mammalian cell culture	Negative ± S9 up to cytotoxic 2,500 μg/ml and precipitation 250 μg/ml
870.5395 Cytogenetics	Micronucleus test on mouse	Negative at the HDT (limit dose) 2,000 mg/kg.

TABLE 1.—TOXICOLOGY PROFILE FOR MESOSULFURON-METHYL—Continued

Guideline No.	Study Type	Results
870.5375 Cytogenetics	Chromosomal aberrations	Negative ± S9 precipitation ≥100 μg/ml
870.5550 Other Effects	Unscheduled DNA	Negative ± S9 precipitation ≥100 μg/ml
870.6200	Acute neurotoxicity screening battery	Study not required.
870.6200	Subchronic neurotoxicity screening battery	Study not required.
870.6300	Developmental neurotoxicity	Study not required.
870.7485	Metabolism and pharmacokinetics	Overall recovery of the radioactive dose was 98–103%, predominantly recovered in the feces within 24 hours (80–97% dose). The onset of absorption was quick (detected in the blood 15 minutes post-dose), but the quantity absorbed was low. At 72 hours post-dose (or 168 hours following the final dose of the repeated study), urinary excretion accounted for 1–4% (except 13–14% in the 10 mg/kg animals), and radioactivity in the bile of the 10 mg/kg animals was only 7–9% dose by 12 hours post-dose. The 10 mg/kg rats had slightly more radioactivity in urine and slightly less radioactivity in feces compared to the 1,000 mg/kg rats. Bioaccumulation was not observed, and radioactivity in tissues was <0.1% dose in all animals at each study termination.
870.7600	Dermal penetration	100% dermal absorption factor (default value)
Special studies		Study not required.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors;'' the ''special FQPA safety factor;'' and the ''default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''special FQPA safety factor'' refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for mesosulfuron-methyl used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR MESOSULFURON-METHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary: (All populations)	No study in the toxicology database indicated there is an acute dietary endpoint of concern.		
Chronic Dietary: (All populations)	NOAEL= 155 mg/kg/day UF = 100 Chronic RfD = 1.55 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 1.55 mg/kg/day	Chronic oral toxicity study in dogs. LOAEL = 574 mg/kg/day [M] based on increased mucus secretion in the cardiac and fundic sections of the stomach, and chronic superficial gastritis (1/6) of male dogs.
Incidental Oral: (Short- and Intermediate-Term)	No residential uses are proposed for mesosulfuron-methyl.		
Dermal Exposure: (Short-, Intermediate-, and Long-Term)	Quantification of dermal risk is not required for this route of exposure due to the lack of dermal, systemic, neurological, and developmental toxicity concerns.		
Inhalation Exposure: (Short-, Intermediate-, and Long-Term)	Oral NOAEL= 155 mg/kg/day (100% Oral Absorption Factor)	Residential LOC for MOE = NA Occupational LOC for MOE = 100	Chronic oral toxicity study in dogs. LOAEL = 574 mg/kg/day [M] based on increased mucus secretion in the cardiac and fundic sections of the stomach, and chronic superficial gastritis (1/6) of male dogs.
Cancer: (Oral, Dermal, and Inhalation)	"Not likely to be carcinogenic to humans" based on the lack of evidence of carcinogenicity in the rats and mice.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been proposed wheat and meat byproducts of cattle, goat, horse, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from mesosulfuron-methyl in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Based on available data, a suitable endpoint for acute dietary risk assessment was not identified because no effects were observed in oral toxicity studies (including developmental studies) which could be attributed to a single-dose exposure. Therefore, an acute dietary risk assessment was not performed.

ii. *Chronic exposure*. In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID^T) and the Lifeline^T Model Version 2.0,, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: tolerance level residues, default processing factors, and 100% crop treated data, with no refinements.

iii. *Cancer*. A quantitative cancer dietary exposure cancer dietary assessment was not conducted because mesosulfuron-methyl was classified as "not likely to be carcinogenic to humans.''

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

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates

of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to mesosulfuron-methyl they are further discussed in the aggregate risk sections in Unit III.E.

EPA determined that three degradates may be present at sufficient quantities (found in aerobic soil and aerobic and anaerobic aquatic environments at levels ranging from 5% to 20% of the applied dose) to warrant inclusion in the drinking water assessment. The three degradates are 2-[3-(4,6-dimethoxypyrimidin-2-yl)ureidosulfonyl]-4-methanesulfonamidomethyl benzoic acid (AE F154851), methyl-2-[3-(4-hydroxy-6-methoxypyrimidin-2-yl)ureidosulfonyl]-4-methanesulfonamidomethylbenzoate (AE F160459), and 2-[3-(4-hydroxy-6-methoxypyrimidine-2-yl)ureidosulfonyl]-4-methanesulfonamidomethyl benzoic acid (AE F160460). EPA determined that these degradates were not of concern for food due to low toxicity and low level of exposure in food, and that, for food, parent mesosulfuron-methyl is the only residue of concern.

Based on the FIRST and SCI-GROW models, the EECs of mesosulfuron-methyl and its degradates for chronic exposures are estimated to be 0.15 parts per billion (ppb) for surface water and 0.015 ppb for ground water.

3. *From non-dietary exposure*. The term "residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Mesosulfuron-methyl is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of 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.''

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 mesosulfuron-methyl and any other substances and mesosulfuron-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that mesosulfuron-methyl 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 OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1.*In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10 X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There are no concerns or residual uncertainties for pre- and/or post-natal toxicity.

3. *Conclusion*. There is a complete toxicity data base for mesosulfuron-methyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X FQPA safety factor to protect infants and children should be removed. The FQPA factor is removed because:

i. There is no evidence of increased quantitative/qualitative susceptibility in the available acceptable guideline studies.

ii. There are no residual uncertainties for pre- and/or post-natal toxicity.

iii. Clear NOAELs have been identified for the effects of concern.

iv. No adverse effects were noted at the highest dose tested in the acceptable guideline developmental toxicity and reproduction studies in rats, and developmental toxicity study in rabbits.

v. There are no proposed residential uses.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

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

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Based on available data, a suitable endpoint for acute dietary risk assessment was not identified because no effects were observed in oral toxicity studies (including developmental studies) which could be attributed to a single-dose exposure. Therefore, mesosulfuron-methyl is not expected to pose an acute dietary risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to mesosulfuron-methyl from food will utilize <1% of the cPAD for the U.S. population, <1% of the cPAD for infants < 1 year old, and <1% of the cPAD for children 1–12. There are no residential uses for mesosulfuron-methyl that result in chronic residential exposure to mesosulfuron-methyl. In addition, there is potential for chronic dietary exposure to mesosulfuron-methyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

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

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
General U.S. Population	1.55	<1	0.154	0.015	54,000
All Infants (< 1 year old)	1.55	<1	0.154	0.015	16,000
Children 1–2 years old	1.55	<1	0.154	0.015	16,000
Children 3–5 years old	1.55	<1	0.154	0.015	16,000
Children 6–12 years old	1.55	<1	0.154	0.015	16,000
Youth 13–19 years old	1.55	<1	0.154	0.015	47,000
Females 13–49 years old	1.55	<1	0.154	0.015	47,000
Adults 20–49 years old	1.55	<1	0.154	0.015	54,000

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

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

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

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

5. *Aggregate cancer risk for U.S. population*. The EPA classified mesosulfuron-methyl as "not likely to be carcinogenic to humans.'' Therefore, mesosulfuron-methyl is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Method EM F08/99-0 (liquid chromatography/mass spectroscopy/mass spectroscopy) is adequate for tolerance enforcement for mesosulfuron-methyl in plant commodities. The method has been subjected to successful independent laboratory validations (ILVs), satisfactory radiovalidation data have been submitted, and the method has been reviewed by an EPA chemist.

Method EM F07/00-0 (liquid chromatography/mass spectroscopy/mass spectroscopy) is adequate for tolerance enforcement for mesosulfuron-methyl in livestock commodities. The method has been reviewed by an EPA chemist. Although there has been no independent lab validation of this method in animal commodities, EPA determined that independent lab validation is not necessary because:

1. This method (F07/00-0) is essentially identical to the plant method (EM F08/99-0), which was succesfully validated in an independent laboratory, and

2. EPA has previously validated single-analyte methods for members of this class of chemicals which use similar extraction and cleanup procedures.

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

B. International Residue Limits

There are currently no Codex, Canadian, or Mexican MRL's or tolerances for mesosulfuron-methyl on wheat.

C. Conditions

The following are being imposed as conditions of registration of mesosulfuron-methyl:

- A one year storage stability (guideline 830.6317) and corrosion characteristics (guideline 830.6320) must be submitted to EPA by October 1, 2005.
- Storage stability data must be submitted to demonstrate the stability of mesosulfuron-methyl residues in/on wheat forage stored frozen for up to 26 months and in/on wheat grain and straw stored frozen for up to 25 months by October 1, 2005.

D. Response to Comments

The one comment received on the tolerance petition stated: "I oppose any tolerance allowance granted for mesosulfuron-methyl on any food product. I am totally against any chemicals in the food I eat. I do not think we should allow these chemical polluters in our food. I know industry waves lots of money to get these

approvals. The American public disapproves of EPA granting these. EPA is even being sued for these approvals. I am totally against granting approval of this pesticide on any food in any amount at all. I prefer zero tolerance.''

Response: This commenter has a disagreement not with how EPA is implementing FFDCA section 408 as it applies to the tolerance petition on mesosulfuron-methyl but with FFDCA section 408 itself. The commenter—and in the commenter's view the general American public as well—would prefer that FFDCA section 408 bar the establishment of any tolerance permitting any pesticide residues to remain on food. That, however, is not the law. Rather, FFDCA section 408 as it is currently written establishes a safety standard under which EPA must evaluate petitions to establish tolerances. EPA has applied that safety standard in ruling on the mesosulfuron-methyl tolerance petition. EPA cannot take a commenter's policy preference on what the FFDCA should say into account in ruling on application of the FFDCA to a particular situation.

V. Conclusion

Therefore, the tolerance is established for residues of methyl 2-[[[[(4,6-dimethoxy-2-pyrimidinyl) amino]carbonyl]amino]sulfonyl]-4-[[(methylsulfonyl)amino] methyl]benzoate]], mesosulfuron-methyl, in or on the raw agricultural commodities aspirated grain fractions at 0.60 ppm; meat byproducts of cattle, goat, horse, and sheep at 0.01 ppm; wheat forage at 0.60 ppm; wheat germ at 0.10 ppm; wheat grain at 0.03 ppm; wheat hay at 0.06 ppm; and wheat straw at 0.30 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by 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 FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of 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–2003–0257 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 June 7, 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 VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0257, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of 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 FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 26, 2004.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.597 is added to read as follows:

§ 180.597 Mesosulfuron-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide mesosulfuron-methyl, (methyl 2-[[[[(4,6-dimethoxy-2-pyrimidinyl) amino]carbonyl]amino]sulfonyl] -4-[[(methylsulfonyl)amino] methyl]benzoate]) in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, meat byproducts	0.01
Goat, meat byproducts	0.01
Grain, aspirated fractions	0.60
Horse, meat byproducts	0.01
Sheep, meat byproducts	0.01
Wheat, forage	0.60
Wheat, germ	0.10
Wheat, grain	0.03
Wheat, hay	0.06
Wheat, straw	0.30

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

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

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

[FR Doc. 04–7781 Filed 4–6–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0296; FRL–7339–4]

Fosthiazate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of

fosthiazate (*O*-ethyl *S*-(1-methylpropyl)(2-oxo-3-thiazolidinyl)phosphonothioate and its metabolite *O*-ethyl *S*-(1-methylpropyl)[2-(methylsulfonyl)ethyl] phosphoramidothioate (ASC–67131) in or on tomato. ISK Biosciences requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). This tolerance will support the use of fosthiazate on tomatoes as a replacement for methyl bromide for the control of nematodes.

DATES: This regulation is effective April 7, 2004. Objections and requests for hearings, identified by docket ID number OPP–2003–0296, must be received on or before June 7, 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 VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0296. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

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

II. Background and Statutory Findings

In the **Federal Register** of November 21 2001 (66 FR 58477) (FRL–6799–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 6F4662) by ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. That notice included a summary of the petition prepared by ISK Biosciences, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for combined residues of the insecticide fosthiazate, (*O*-ethyl *S*-(1-methylpropyl)(2-oxo-3-thiazolidinyl)phosphonothioate) and its metabolite ASC-67131 (*O*-ethyl *S*-(1-methylpropyl)[2-(methylsulfonyl)ethyl] phosphoramidothioate), in or on tomatoes at 0.02 parts per million (ppm). Fosthiazate is a new organophosphate (OP) active ingredient (a.i.), that controls a broad spectrum of nematode species. It may be applied through drip (trickle) irrigation systems, as a band application under plastic mulch. Application is made once per season, either prior to or at planting/transplanting of tomatoes. The United States Department of Agriculture's Interregional Research Project No. 4 has identified fosthiazate as a viable alternative to the use of methyl bromide for control of nematodes infesting tomato fields. Methyl bromide has been identified as a chemical that depletes the earth's ozone layer, and thus its use is being phased out. The United States is in the process of implementing a methyl bromide use reduction strategy leading to a complete ban for soil fumigation uses by the year 2005. Fosthiazate will provide growers with a pest management tool for use against nematode pest pressure.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For

further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of the insecticide fosthiazate, (*O*-ethyl *S*-(1-methylpropyl)(2-oxo-3-thiazolidinyl)phosphonothioate) and its metabolite ASC-67131 (*O*-ethyl *S*-(1-methylpropyl)[2-(methylsulfonyl)ethyl] phosphoramidothioate) on tomatoes at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fosthiazate are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	13–Week feeding study-rat	Systemic Toxicity LOAEL: 0.08 and 0.09 mg/kg/day for males and females, respectively, based on microscopic lesions in the adrenals (males) and increased ALT (females) levels. No NOAEL was established. At higher doses, the severity of vacuolation of cells in zona fasciculata (≥1.07 ppm) and zona glomerulosa (≥53.6 ppm) of the adrenals increased in a dose-dependent manner; at ≥53.6 ppm, the brain cholinesterase inhibition (ChEI) was also noted. In addition, there was increase in adrenal gland weight at 429 ppm LOAEL for ChEI: 10.7 ppm (0.77 and 0.89 mg/kg/day for males and females, respectively) based on plasma and RBC ChEI. NOAEL: 1.07 ppm (0.08 and 0.09 mg/kg/day for males and females, respectively)
--	4–Week range-finding feeding study-rat	Systemic LOAEL: 400 ppm (equivalent to 40.87 mg/kg/day in males and 43.52 mg/kg/day in females) based on fur loss, muscle tremor, enlarged pale spongiocytes in the adrenals, increased adrenal weights, and increased alkaline phosphatase and alanine aminotransferase levels. Systemic NOAEL: 100 ppm (equivalent to 9.69 mg/kg/day in males and 10.67 mg/kg/day in females) LOAEL for ChEI: 5 ppm (equivalent to 0.48 mg/kg/day in males and 0.5 mg/kg/day in females) based on decreased plasma butyryl- and acetyl-cholinesterase, and brain acetyl-cholinesterase in females, and erythrocyte acetyl-cholinesterase in males NOAEL: 1 ppm (equivalent to 0.10 mg/kg/day in males and females
--	28–Day feeding study-rat with 2-butanesulfonic acid (BSA)	NOAEL: 1,000 mg/kg/day, the highest dose tested.
--	4–Week range-finding feeding study-mice	LOAEL: 400 ppm (males: 68.99 and females: 82.38 mg/kg/day) based on increased tubular basophilia in the kidney NOAEL: 100 ppm (equivalent to 17.59 mg/kg/day in males and 21.43 mg/kg/day in females)
870.3150	13-Weeks subchronic toxicity-dog	Systemic Toxicity LOAEL: 0.11 mg/kg/day, based on histopathological changes in the adrenal glands NOAEL: 0.054 mg/kg/day LOAEL for plasma ChEI: 0.11 mg/kg/day in females and 0.54 mg/kg/day in males NOAEL: 0.054 mg/kg/day in females and 0.11 mg/kg/day in males.

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

Guideline No.	Study Type	Results
870.3200	21–Day repeated dermal toxicity-rat	Systemic LOAEL: 250 mg/kg/day for males and females based on mortality, clinical signs (emaciation, torpor lethargy or dullness, tremor, hunched posture, hypothermia, gasping, hypersensitivity to noise, pallor paleness, tachypnea labored breathing, and piloerection), decreased body weight gains, and histopathology of the adrenal cortex observed in both sexes; increased food conversion factor and hematology findings were observed in males only Systemic NOAEL: 25 mg/kg/day LOAEL for ChEI: 25 mg/kg/day in males and 2.5 mg/kg/day in females based on inhibition of plasma, erythrocyte, and brain cholinesterase (ChE) in both sexes NOAEL for ChEI: 2.5 mg/kg/day in males and 0.5 mg/kg/day in females
870.3700	Developmental toxicity-rat	Maternal Toxicity LOAEL = 10 mg/kg/day, based on reduced body weight gain NOAEL = 5 mg/kg/day Developmental Toxicity LOAEL = Not determined NOAEL = 10 mg/kg/day Although data were not provided on clinical signs in the dams during or after dosing no cholinergic signs were seen in neurotoxicity studies at the same dose. Therefore, the study classification is upgraded to acceptable/guideline
870.3700	Developmental toxicity-rabbit	Maternal LOAEL: 2 mg/kg/day based on weight loss, abortion, and cholinergic clinical signs noted in the range finding study (MRID 41381110) NOAEL: 1.5 mg/kg/day. Developmental toxicity LOAEL: Not determined NOAEL: 2 mg/kg/day No developmental toxicity was observed at any dose tested in the definitive prenatal developmental toxicity study. No developmental toxicity was observed at doses up to 2.5 mg/kg in a range-finding study
870.3800	2–Generation reproduction-rat	Parental Toxicity LOAEL = 100 ppm (equivalent to 9.32 and 7.21 mg/kg/day in females, and males, respectively) based on increased incidences of adrenal zona glomerulosa hypertrophy, centriacinar hepatocytic vacuolation and liver inflammation in F_0 females and periacinar hepatocytic hypertrophy in F_0 males NOAEL: 30 ppm (equivalent to 2.6 and 2.09 mg/kg/day) in females and males, respectively). in F_0 females and in males Reproductive Toxicity LOAEL = >100 ppm NOAEL = 100 ppm Offspring Toxicity LOAEL = 30 ppm based on decreased litter size and decreased pup weight and viability index during lactation NOAEL = 10 ppm
870.4100	1–Year chronic oral toxicity-dog	Systemic LOAEL: 0.5 mg/kg/day in males based on increased alanine aminotransferase and 5 mg/kg/day in females based on microscopic lesions in the adrenal gland NOAEL: 0.1 mg/kg/day in males and 0.5 mg/kg/day in females LOAEL for ChEI: 0.5 mg/kg/day based on plasma acetyl- and butyryl-cholinesterase activity in males/females NOAEL: 0.1 mg/kg/day based on plasma acetyl- and butyryl-cholinesterase activity The erythrocyte and brain ChE activity LOAELs were not observed. The erythrocyte and brain cholinesterase NOAELs are 5 mg/kg/day

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

Guideline No.	Study Type	Results
870.4200	Carcinogenicity-mouse	Systemic LOAEL: 10.43 mg/kg/day (100 ppm) for females, based on increased adrenal cortico-medullary pigmentation and 30.51 mg/kg/day (300 ppm) for males, based on decreased body weights and non-neoplastic lesions in the adrenals, pituitary and kidney. At 300 ppm, increase in cholinergic signs (ataxia, hunched posture, tremors) was observed NOAEL: 3.20 mg/kg/day (30 ppm) and 10.32 mg/kg/day (100 ppm) for females and males, respectively. The test material was not carcinogenic at the doses tested
870.4300	Combined chronic/carcinogenicity-rat	Systemic LOAEL: 50 ppm (2.45 mg/kg/day) for females, based on decreased RBC parameters (packed cell volume, hemoglobin, and RBC count), and increased incidence of atrophy and foamy interstitial cells in the ovaries and 200 ppm (8.34 mg/kg/day) for males, based on increased incidences of retinal atrophy, skeletal degenerative myopathy and non-neoplastic lesions in the adrenal and pituitary glands NOAEL: 10 ppm (0.50 mg/kg/day) and 50 ppm (1.94 mg/kg/day) for female and male rats, respectively. The test material was not carcinogenic at the doses tested LOAEL for ChEI: 10 ppm for male rats (0.38 mg/kg/day) and 1 ppm for female rats (0.051 mg/kg/day) based on inhibition of plasma and RBC ChE activity NOAEL: 1 ppm for male rats (0.039 mg/kg/day) and a NOAEL was not established for female rats
870.5100	Gene mutation *salmonella*/mammalian activation gene mutation assay with BSA	Negative in *salmonella* strains with or without S-9 activation. No cytotoxicity response up to the limit dose
870.5265	Gene mutation *salmonella*/mammalian activation gene mutation assay	Negative for mutagenic effects at dose levels up to 5,000 μg/plate with or without metabolic activation
870.5300	*In vitro* gene mutation-mouse lymphoma assay	No evidence of increased mutation frequency at the thymidine locus in cells treated upto cytotoxic concentration with or without S-9. Cytotoxicity was evident at ≥640 μg/ml (-S9) and ≥160 μg/mL (+S9)
870.5300	*In vitro* mammalian gene mutation - mouse lymphoma assay with BSA	No evidence of increased mutation frequency in cells treated up to the limit dose with or without S-9
870.5375	*In vitro* cytogenetics (CHO) assay	No effects at concentrations up to 200 μg/ml (without S9) or 750 μg/mL (with S9). Cytotoxicity was evident at ≥50 μg/mL (-S9)and ≥93.75 μg/mL (+S9)
870.5395	*In vivo* mammalian cytogenetics assay	No evidence of clastogenic or aneugenic effect at doses tested. Negative for induction of micronuclei at a dose approaching oral MTD, 50 mg/kg
870.5395	*In vivo* mammalian cytogenetics micronucleus assay with BSA	No evidence of clastogenic or aneugenic effect at doses tested. Negative for induction of micronuclei
870.5500	*In vitro* DNA repair test	Negative in the DNA repair test. Fosthiazate did not induce any clear differences in the diameter of growth inhibitory zones between H17 (rec+) and M 45 (rec-), either in the presence or absence of metabolic activation
870.6100	Acute delayed neurotoxicity (ADNT) study-hen	Six hens treated with IKI-1145 (fosthiazate technical) died within 6 days; 2 had relapses and progressed to moribundity on days 13 and 26; 9 hens survived. No abnormal neuropathological changes were observed except for a minimal case of focal gliosis in the lumbar sacral area of one of the two relapsing hens. IKI-1145 did not cause ADNT

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

Guideline No.	Study Type	Results
870.6200	Acute neurotoxicity screening battery	Neurotoxicity LOAEL: 10 mg/kg/day based on decreased forelimb grip strength in females. No abnormal neuropathological changes were observed NOAEL: 0.4 mg/kg/day LOAEL for ChEI: 10 mg/kg/day based on inhibition of plasma. Erythrocyte, and brain 3 hrs postdosing (plasma ChEI was reversible) NOAEL: 0.4 mg/kg/day
--	Special cholinesterase inhibition study-rat	LOAEL: 4.0 mg/kg/day based on plasma ChEI NOAEL: 0.4 mg/kg/day Decrease plasma ChE activity was noted in the male and female rats 3 hours after a single dose at 4.0 mg/kg body weight. Brain and RBC ChE activities were unaffected
870.6200	Subchronic neurotoxicity screening battery	Systemic LOAEL: 2.5 mg/kg/day based on decreased hind limb grip strength (21%; $p<0.01$) in females. No abnormal neuropathological changes were observed NOAEL: 0.5 mg/kg/day. LOAEL for ChEI: 0.5 mg/kg/day based on significant inhibition of plasma, erythrocyte and brain ChE in females at weeks 5 and/or 9 and 14 NOAEL: 0.05 mg/kg/day
870.7485	Metabolism-rat	IKI-1145 (fosthiazate technical) was rapidly absorbed and widely distributed with only >5% detected in the tissues. No sex-related differences noted in the absorption and distribution; absorption was not dose dependent. Peak concentration in the blood was at 0.33 hr in both sexes. Only one metabolite, BESxP, represented >10% of the administered dose. Test material was rapidly eliminated primarily in the urine (57%-72%) within 24 hrs. Unacceptable/Guideline due to lack of identification of metabolites in fecal radioactivity (accounted for 9-15% of the administered dose). Mean recovery was 95%-99%. IKI-1145 was metabolized by multiple processes including hydrolysis, oxidation, methylation and glutathione conjugation
870.7485	Metabolism-rat	IKI-1145 was rapidly and extensively absorbed independent of dose; rapidly metabolized and excreted in the urine (>65%), expired air (>10%) and in feces (<9%). Elimination was biphasic with first phase elimination half-life (t1/2) of 5-6 hrs and second phase of 85-112 hrs. Metabolism and excretion was rapid within 24 hrs. IKI-1145 was metabolized by multiple processes including hydrolysis, oxidation, methylation and glutathione conjugation. Female rats tended to excrete a metabolite containing a methylsulfinylethyl group while male rats excreted more containing a sulfoethyl group
870.7485	Metabolism-rat with BSA	Recovery was 100-108%. BSA was rapidly eliminated unchanged following dosing via the iv (approx. 100% in the urine) or oral (63%-89% in the urine and 10%-28% in feces) routes. Tissue burden was low

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences. Based on the weight of evidence presented, the Agency concluded that a developmental neurotoxicity (DNT) study with comparative cholinestrase (ChE) measurements in adults and pups is required for fosthiazate. The available data base confirms that fosthiazate is a ChE inhibitor and the increased sensitivity for this effect cannot be confirmed until the results of DNT study are known. Based on the lack of a DNT study, the Agency also concluded that a Database Uncertainty Factor (UFdb) is necessary. The available data suggest that results of a DNT study, as well as additional ChE data, could potentially impact the doses selected for risk assessment. Therefore, a 10X UFdb is required for acute dietary risk assessment and a 3X UFdb is required for chronic dietary risk assessment. Refer to Unit III.D.3 of this document for a detailed discussion of these uncertainty factors.

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

chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

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

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

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

Exposure Scenario	Dose (mg/kg/day) UF/ MOE	Hazard and Exposure Based Special FQPA Safety Factor	Study and Toxicological Effects
	Dietary risk assessments		
Acute dietary (general population including infants and children)	NOAEL = 0.4 UF = 100 UFdb* = 10	1X	Acute oral neurotoxicity/rat LOAEL = 10 mg/kg/day based on inhibition of RBC ChE in males within 3 hrs post dosing
	Acute RfD and Acute PAD = 0.0004 mg/kg/day		
Chronic dietary	NOAEL = 0.05 UF = 100 UFdb* = 3	1X	Chronic oral toxicity/rat LOAEL= 0.38 mg/kg/day based on inhibition of plasma and RBC ChE in males
	Chronic RfD and Chronic PAD = 0.00017 mg/kg/day		

* UFdb = database uncertainty factors of 10X and 3X are applied for lack of a DNT study and ChE data

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Currently there are no tolerances established for fosthiazate on any commodity. Risk assessments were conducted by EPA to assess dietary exposures from fosthiazate in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute dietary risk assessment was based on field trial residues in tomato (½ limit of quantitation (LOQ) parent + ½ LOQ ASC-67131) and 100% crop treated (CT). Risks of concern were considered at the 95th percentile because field trial data with 1.3X application rate, minimum preharvest interval (PHI) and 100% CT were used, which are considered conservative inputs. No detectable residues of either the parent or its metabolite of concern were found in the edible portion during these field trials at a limit of detection (LOD) of 0.01 ppm using gas chromatograph/flame photometric detector (GC/FPD) (phosphorus) as an analytical method.

The Agency believes that the default assumption of ½ LOD of the GC/FPD (phosphorus) analytical method for each of the parent and metabolite significantly exaggerates actual exposures. Radiolabeled tomato metabolism studies were done at a 1.3X rate and using an analytical method GC/FPD (phosphorus) with a much lower LOD of 0.001 ppm (an order of magnitude lower). No residues were found in the edible fruit following the radiolabel studies. This means that residues, if present, would be present at <0.001 ppm at this application rate. Thus, the use of ½ LOD of the GC/FPD (phosphorus) analytical method for both parent and metabolite is a conservative estimate of exposure (compounded by a 100% CT assumption): Radiolabel metabolism studies suggest that residues are at least five times lower than the ½ LOD of the GC/FPD (phosphorus) analytical method assumed in the assessment, and even more if one were to take into account the 1.3X application rate.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary risk assessment was based on field trial residues in tomatoes, 100% CT, and average daily consumption estimates for each food/food form.

iii. *Cancer.* In accordance with the EPA Draft Guidelines for Carcinogen Risk Assessment (July 1999), the Agency has classified fosthiazate as "not likely to be carcinogenic to humans.'' This classification is based on the lack of evidence for carcinogenicity in studies with mice and rats; therefore, a quantitative cancer dietary assessment has not been conducted.

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

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

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

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of fosthiazate for acute exposures are estimated to be 2.1 parts per billion (ppb) for surface water and 2.4 ppb for ground water. The EECs for chronic exposures are estimated to be 0.6 ppb for surface water and 2.4 ppb for ground water. These estimates are based on the assumption that application will be made by drip irrigation in bands with plastic mulch. Runoff as a result of this use may be unlikely from the day of application until the day of harvest (approximately 90 days) when the field is covered by the plastic mulch, unless an extremely heavy amount of rain falls immediately after application and causes runoff from under the mulch into the uncovered area. For this reason, application is prohibited when heavy rainfall is predicted. Runoff after the removal of the plastic cover may be possible, however the amount of fosthiazate remaining in soil and available for runoff would be much less than the amount applied, due to chemical degradation and dissipation in soil and to chemical uptake into plants. Assuming that half of the amount applied is absorbed by plants and the remaining half dissipates in soil at a rate of 45 days (based on laboratory and field studies), it is expected that only about one eighth of what was originally applied would be available for runoff after the cover is removed (90 days postapplication). Maximum application rate is 1.5 lbs a.i. per acre with only one application per season. Therefore, the Agency predicts that the peak estimated drinking water concentrations (EDWC) would be roughly 2.1 µg/L and the chronic EDWC would be 0.6 µg/L for the maximum application rate. These concentrations were modeled under the most conservative scenarios and likely exceed the actual level of contamination in the environment. In actual practice, the same plastic mulch is left in the field for rotated crops, thus making the EEC calculations based on the mulch being removed after 90 days even more conservative.

SCI-GROW assumes the pesticide is applied above ground without cover and the subsequent and heavy amount of water (140% of yearly average amount of rainfall) leaches some of the pesticide down to ground water. The plastic mulch cover would minimize volatilization and runoff, therefore increasing the amount of the chemical available for leaching. However, with the drip irrigation method, a small amount of water is slowly dripped into soils precisely where it is needed, thus lessening the amount of water flowing down through the soil past the root zone where it cannot be used by the crop. This should greatly reduce the potential for the chemical to reach ground water systems. For this reason, the Agency does not expect ground water contamination from the drip irrigation method under plastic mulch to exceed the levels calculated by the SCI-GROW model. Terrestrial field dissipation studies indicate no leaching of fosthiazate residues below the top (0-15 cm) soil layer.

3. *From non-dietary exposure*. The term "residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

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

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information'' concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity.''

Fosthiazate is an OP pesticide, and has a common mechanism of toxicity with other OPs. The Agency has completed a Revised Cumulative Risk Assessment (CRA) for OPs, which can be found on the Agency's web site *www.epa.gov/pesticides/cumulative*. This assessment examined the cumulative effects of exposure to the OP pesticides considering monitoring values for OPs in food and water, and potential residential exposures. The relative potency factor (RPF) for fosthiazate was determined using the estimated benchmark dose (BMD)10 for female brain ChE data from feeding toxicity studies in the rat. The BMD10 is the estimated dose at which ChE is inhibited 10% compared to background inhibition. Although fosthiazate was considered in the cumulative hazard and dose-response assessment, it was not included in the OP cumulative exposure assessment since this OP pesticide (i) is not monitored by the USDA's Pesticide Data Program (PDP) or other monitoring data sets used in the cumulative OP assessment and is not expected to be present in food as a result of its use on tomatoes at levels that would be detectable by monitoring; (ii) is not expected to be present in surface water or ground water to a degree that would have any impact on the data on drinking water residues of

OPs used in the cumulative risk assessment; and (iii) has no residential uses. Residue data are available for fosthiazate from crop field trials conducted with tomatoes in which maximum (label) application rates and minimum (label) preharvest intervals were used. No residues were detected in these field trials (<0.01 ppm). Thus, EPA concludes that there is reasonable expectation that fosthiazate residues would not be detected in monitoring data from use on tomato. Further, fosthiazate would not contribute to the total estimated cumulative dietary risk in the OP cumulative risk assessment since non-detectable residues in monitoring data were considered to have a residue value of "zero.'' None of the OPs in the CRA made a significant contribution to overall exposure via the drinking water pathway, and fosthiazate does not look as though it makes a significant exposure by the water pathway from the use on tomato because of the low application rate, only one application per season, application method of drip irrigation under plastic mulch, and no leaching of the compound below the top soil layer. Accordingly, after considering the cumulative effects of the OPs, EPA concludes that the overall cumulative risk has a limited bearing on this tolerance action because fosthiazate exposure will have no impact on the estimate of cumulative risk for OPs.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* In a 2–generation reproduction study, there is qualitative and quantitative evidence of increased susceptibility in offspring following prenatal and postnatal exposure to fosthiazate since the effects on pups are considered to be severe and occurred at a lower dose than those on parental animals.

Since there is evidence of increased susceptibility of the young following prenatal and postnatal exposure to fosthiazate in the rat reproduction study, the Agency performed a Degree of Concern Analysis to: (i) Determine the level of concern for the effects observed when considered in the context of all available toxicity data; and (ii) identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment of this chemical.

In determining the degree of concern for these findings in the reproduction study, the Agency considered the overall quality of the study; the dose levels at which the pup effects were observed; the dose response of the pup effects; and the comparative severity of the effects seen. It was determined that there is a low degree of concern and no residual uncertainties for the susceptibility since: (i) The study was well conducted; (ii) the dose-response in the offspring is well characterized; (iii) clear NOAEL and LOAEL were established for the effects on the offspring; (iv) although the decrease in pup survival seen at the LOAEL is severe, this could be attributed to exposure to higher levels of the chemical since the mortalities occurred during early lactation; and (v) although cholinesterase activity was not measured in this study, cholinergic signs and cholinesterase inhibition were seen at comparable doses in other studies and thus could have been a cause for the pup mortality.

3. *Conclusion.* The toxicological data base for fosthiazate is not complete and therefore, EPA has retained the FQPA safety factor, in the form of a UFdb, at the level of 10X for acute risk and 3X for chronic risk. A 28–day inhalation study in rats is required, in order to better characterize exposure via the inhalation route. A DNT study in rats with comparative ChE measurements in adults and pups is also required, and is currently being conducted by the registrant. The available data base confirms that fosthiazate is a ChE inhibitor and the increased sensitivity for this effect cannot be confirmed until the results of a DNT study are known.

A FQPA safety factor, in the form of a Ufdb, was retained because the available data suggest that results of a DNT study could potentially impact the doses selected for risk assessment. ChEI has been shown to be the most sensitive endpoint for fosthiazate in adults; it can also be assumed that ChEI may potentially be the most sensitive endpoint for pups. The regulatory dose level for acute dietary risk assessment is the NOAEL of 0.4 mg/kg/day selected from the acute neurotoxicity study in adult rats. The regulatory dose level for chronic dietary risk assessment is the NOAEL of 0.05 mg/kg/day from the 2–year chronic/carcinogenicity toxicity study in rats. The dose levels in the reproductive toxicity study are estimated to be 0, 0.21, 0.69, 2.09, and 7.21 mg/kg/day. The offspring NOAEL and LOAEL are 0.69 mg/kg/day and 2.09 mg/kg/day, respectively, based on decreased pup weight, viability index, and litter size in the F_1 pups.

It can be assumed that doses used in a DNT study may be similar to those used in the reproductive toxicity study. Although it is not likely given the effects seen to date in the fosthiazate data base, the results from the DNT may show severe effects at the lowest dose tested (estimated at 0.21 mg/kg/day). In such circumstances, EPA may impose up to a 10X safety factor to project a NOAEL for the DNT which would mean a projected NOAEL of 0.02 mg/kg/day. Thus, the DNT may result in an acute ChE NOAEL for pups that is greater than 10X lower than the established offspring NOAEL of 0.69 mg/kg/day and the NOAEL of 0.4 mg/kg/day currently used for establishing the acute RfD. Given that the DNT could impact the level chosen for estimating the acute RfD by 10X or greater, EPA concludes that reliable data do not support removing the 10X children's safety factor and thus have retained that factor in the form of a 10X UFdb for acute dietary risk assessment.

As to the chronic RfD, the projected multi-dosing ChE NOAEL for pups from the DNT may be lower than the established chronic ChE NOAEL of 0.05 mg/kg/day from the 2–year chronic/carcinogenicity study and could be as low as 0.02 mg/kg/day (i.e., 10X lower than the lowest dose in the reproductive toxicity study). Although the DNT may possibly impact the level chosen for estimating the chronic RfD, there is reliable data supporting use of a 3X additional factor for chronic dietary risk assessment, because, the 0.05 mg/kg/day NOAEL currently used for risk assessment is approximately 3X higher than the potential lower NOAEL (0.02 mg/kg/day) that could be attained in the DNT. Therefore, EPA has chosen a 3X safety factor for the protection of infants and children, in the form of a 3X UFdb for chronic dietary risk assessment.

In absence of the 28–day inhalation study, the Agency is assuming 100% absorption for the route to route extrapolation. As the Acute Toxicity Category for the oral route is II and the Acute Toxicity Category for the inhalation route is III, it is unlikely that an inhalation NOAEL would be lower than the oral NOAEL being used currently. However, in order to better characterize exposure via the inhalation

route specifically, this study would provide information on portal of entry effects specific to the nasal passages and pulmonary tract.

The dietary food exposure assessment is conservative, using field trial level residues and assuming 100% CT. Dietary drinking water exposure is based on conservative modeling estimates and there are no residential uses. These assessments will not underestimate the exposure and risks posed by fosthiazate.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

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

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to fosthiazate will occupy 12% of the aPAD for the U.S. population, 10% of the aPAD for females 13–49 years of age, 11% of the aPAD for all infants <1 year of age and 29% of the aPAD for children 1–2 years of age. In addition, there is potential for acute dietary exposure to fosthiazate in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FOSTHIAZATE

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.0004	12	2.1	2.4	12
Infants (<1 year)	0.0004	11	2.1	2.4	4
Children (1–2 years)	0.0004	29	2.1	2.4	3
Females (13–49 years)	0.0004	10	2.1	2.4	11

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fosthiazate from food will utilize 7% of the cPAD for the U.S. population; 4% of the cPAD for all infants <1 year; 15% of the cPAD for children 1–2 years; and 6% of the cPAD for females 13–49 years. There are no residential uses for fosthiazate that result in chronic residential exposure to fosthiazate. In addition, there is potential for chronic dietary exposure to fosthiazate in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, it is noted that the DWLOCs are slightly exceeded by the estimated ground water EECs for two population subgroups. However, these concentrations were modeled under the most conservative scenarios and likely exceed the actual level of contamination in the environment. SCI-GROW, used to model ground water exposures, is a Tier 1 unrefined assessment and therefore, highly conservative. Importantly, pesticide-specific aspects to this use of fosthiazate are likely to significantly exaggerate the conservativeness of the SCI-GROW estimates. SCI-GROW assumes the pesticide is applied above ground without cover and a subsequent and heavy amount of water (140% of yearly average amount of rainfall) leaches some of the pesticide down to ground water. However, with the proposed registration using the drip irrigation method, a small amount of water is slowly dripped into soils precisely where it is needed, thus lessening the amount of water containing pesticide residues flowing down through the soil past the root zone where it cannot be used by the crop. This is expected to reduce the potential for the chemical to reach into ground water systems, and the actual ground water EECs would be less than what SCI-GROW predicted. Further, fosthiazate is required to be applied in fields using plastic mulch which significantly decreases the effect of rainfall on pesticide leaching. Finally, terrestrial field dissipation studies submitted to the Agency indicate no leaching of fosthiazate residues below the top (0-15 cm) soil layer. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FOSTHIAZATE

Population Subgroup	cPAD (mg/kg/day)	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.00017	7	0.6	2.4	6
Infants (< 1 year)	0.00017	4	0.6	2.4	2
Children (1–2 years)	0.00017	15	0.6	2.4	2
Females (13–49 years)	0.00017	6	0.6	2.4	5

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

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

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

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

5. *Aggregate cancer risk for U.S. population*. Fosthiazate has been classified into the category "Not likely to be carcinogenic to humans.'' This classification is based on the lack of evidence for carcinogenicity in mice and rats. Therefore, fosthiazate is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of fosthiazate in/on plant or livestock commodities.

V. Conclusion

Therefore, the tolerance is established for combined residues of fosthiazate, (*O*-ethyl *S*-(1-methylpropyl)(2-oxo-3-thiazolidinyl)phosphonothioate) and its metabolite ASC-67131 ((*RS*)-*S*-sec-Butyl *O*-ethyl *N*-[2-(methylsulfonyl)ethyl] phosphoramidothioate), in or on tomato at 0.02 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0296 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 June 7, 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 VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0296, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' "Policies that have federalism implications'' is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' "Policies that have tribal implications'' is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

rule is not a "major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 26, 2004.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.596 is added to subpart C to read as follows:

§ 180.596 Fosthiazate; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of Fosthiazate (*O*-ethyl *S*-(1-methylpropyl)(2-oxo-3-thiazolidinyl)phosphonothioate and its metabolite *O*-ethyl *S*-(1-methylpropyl)[2-(methylsulfonyl)ethyl] phosphoramidothioate) (ASC–67131).

Commodity	Parts per million
Tomato	0.02

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

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

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

[FR Doc. 04–7864 Filed 4–6–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0036; FRL–7352–8]

Hygromycin B phosphotransferase; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the hygromycin B phosphotransferase (APH4) marker protein on cotton when applied/used as an inert ingredient in plant-incorporated protectants. Syngenta Seeds 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 hygromycin B phosphotransferase (APH4) marker protein when used as a plant-incorporated protectant formulation inert ingredient.

DATES: This regulation is effective April 7, 2004. Objections and requests for hearings, identified by docket ID number OPP–2004–0036, must be received on or before June 7, 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: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. 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–2004–0036. 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 *E-CFR Beta Site Two at http://www.gpoaccess.gov/ecfr/*.

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

II. Background and Statutory Findings

In the **Federal Register** of December 10, 2003 (FR 68 2371) (FRL–7332–7), EPA issued a notice pursuant to section 408(d)(3) of the Federal Food, Drug, Cosmetic Act (FFDCA), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (3F6761) by Syngenta Seeds, 3054 Cornwallis Road, Research Triangle Park, North Carolina 27709–2257. This notice included a summary of the petition prepared by the petitioner Syngenta Seeds. Comments were received from grower groups and the National Cotton Council supporting this petition.

The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the

requirement of a tolerance for residues of hygromycin B phosphotransferase (APH4) marker protein when used as a plant-incorporated protectant formulation inert ingredient.

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 exemption 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. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . '' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Based upon the quanity of APH4 protein used as test material in the oral toxicity study, and due to the extremely low expression levels noted in cotton tissues and the fact that pollen was the only tissue that consistently maintained quantifiable levels of this marker protein, the Agency has determined that this marker protein will pose no toxicity. Further data demonstrated the lack of toxicity of the protein following acute oral exposure in mice, and the rapid degradation of the APH4 protein upon exposure to simulated gastric intestinal fluids. The lack of amino acid sequence similarity of the APH4 protein to proteins known to be mammalian toxins or human allergens further supports lack of toxicity. When proteins are toxic, they are known to act via acute mechanisms and at very low doses (Sjoblad, R.D., J.T. McClintock and R. Engler (1992) ''Toxicological Considerations for Protein Components of Biological Pesticide Products.'' Regulatory Toxicol. Pharmacol. 15: (3–9)). Therefore when a protein demonstrates no acute oral toxicity in high-dose testing using a standard laboratory mammalian test species, this supports the determination that the protein will be non-toxic to humans and other mammals, and will not present a hazard under any realistic exposure scenario, including long-term exposures.

IV. Aggregate Exposures

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

A. Dietary Exposure

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectant chemical residue, and exposure from non-occupational sources.

1. *Food*. Oral exposure, at very low levels, may occur from ingestion of derivatives of cottonseed. Cottonseed derivatives such as cottonseed oil are used in some food products. Data demonstrated that APH4 was not detected in most of the samples of the derivatives of cottonseed. APH4 was not detected in most of the samples of COT102-derived cottonseed analyzed or any of the cotton fiber. In the few samples in which APH4 was detectable, the quantities were below the level of quantification. This plant-incorporated protectant has demonstrated a lack of mammalian toxicity and use sites are all agricultural for control of insects.

2. *Drinking water exposure*. No exposure to APH4 and the genetic material necessary for its production as an inert ingredient via drinking water are expected. The protein is incorporated into the plant and should not contaminate drinking water sources.

B. Other Non-Occupational Exposure

1. *Dermal exposure*. Dermal exposure is unlikely because the inert ingredient is contained within the plant cells. If exposure were to occur, no risks would be expected since APH4 has demonstrated a lack of mammalian toxicity.

2. *Inhalation exposure*. Inhalation exposure is unlikely because the inert ingredient is contained within the plant cells. If exposure were to occur, no risks would be expected since APH4 has demonstrated a lack of mammalian toxicity.

V. Cumulative Effects

Due to the lack of mammalian toxicity to the APH4 protein, the Agency concludes that there are no cumulative effects for this inert ingredient.

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

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) also 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 (MOS) will be safe for infants and children. In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the APH4 protein and the genetic material necessary for its production. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional MOS does not apply. Futher, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

VII. Other Considerations

A. Endocrine Disruptors

The inert ingredient APH4 is a protein derived from sources that are not known to exert an influence on the endocrine or immune systems.

B. Analytical Method(s)

Validated methods for extraction and direct ELISA analysis of APH4 in cotton seed have been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exist for the APH4 protein and the genetic material necessary for its production.

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. 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–2004–0036 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 June 7, 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–2004–0036, 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).

IX. 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.

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: March 22, 2004.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1249 is added to subpart D to read as follows:

§ 180.1249 Hygromycin B phosphotransferase (APH4) marker protein and the genetic material necessary for its production in all plants; exemption from the requirement of a tolerance.

Hygromycin B phosphotransferase (APH4) and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as a plant-incorporated protectant inert ingredient in cotton. ''Genetic material necessary for its production'' means the genetic material which comprise genetic material encoding the APH4 protein and its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the APH4 protein, such as promoters, terminators, and enhancers.

[FR Doc. 04–7866 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 00–185, FCC 03–162]

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the I.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the rule published on August 12, 2003. Those rules permitted certain mobile-satellite service (MSS) providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands to integrate ancillary terrestrial components (ATCs) into their MSS networks.

DATES: Effective April 7, 2004.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: On July 3, 2003, the Commission released an Order on Reconsideration, a summary of which was published in the **Federal Register**. See 68 FR 47856 (August 12, 2003). Although the rule changes in the Order on Reconsideration became effective on September 11, 2003, several rule sections contained modified information collection requirements, which required approval by the Office of Management and Budget (OMB). The information collection requirements

were approved by OMB. See OMB No. 3060–0994.

List of Subjects in 47 CFR Parts 2 and 25

Radio, Satellites, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–7869 Filed 4–6–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT65

Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: We, the Fish and Wildlife Service (Service), take emergency action to establish an additional manatee protection area in Lee County, Florida. This action is authorized under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), based on our determination that there is substantial evidence of imminent danger of taking one or more manatees and the emergency designation of a manatee refuge is necessary to prevent such taking. In evaluating the need for emergency designation of an additional manatee protection area, we considered the biological needs of the manatee, the level of take at these sites, and the likelihood of additional take of manatees due to human activity. Within 10 days after establishing a protection area in accordance with this section, the Service will begin proceedings to establish these areas in accordance with 50 CFR 17.103. The area established by this rule will be a manatee refuge as defined by 50 CFR 17.102 and watercraft will be required to proceed at either ''slow speed'' or at not more than 25 miles per hour, on an annual or seasonal basis, as marked. While adjacent property owners must comply with the speed restrictions, the designation will not preclude ingress and egress to private property.

We anticipate making a final determination of these sites in a final rule within the 120-day effective period unless State or local governments implement measures at these sites that would, in our view, make such establishment unnecessary to prevent the taking of one or more manatees.

DATES: In accordance with 50 CFR 17.106, the effective date for this action will be April 7, 2004, which will also be the date of posting of the sites, and publication in the following newspapers: Ft Myers News-Press, Cape Coral Daily Breeze, and Naples Daily News. This emergency action will remain in effect for 120 days after publication in the **Federal Register** or until August 5, 2004.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David Hankla or Chuck Underwood (see **ADDRESSES** section), telephone 904/232–2580 or visit our Web site at *http://northflorida.fws.gov.* In the event that our Internet connection is not functional, please contact the Service by mail (see ADDRESSES) or telephone (904/232–2580), for alternative methods to obtain further information related to this issue.

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee (*Trichecus manatus*) is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the population is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). Manatees reside in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in waters of the State of Florida throughout the year, and nearly all manatees winter in peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20° Celsius (68° Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from natural springs and industrial discharges for warmth. In warmer months, they expand their range and are seen rarely as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish and Wildlife Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA.

Human activities, and particularly waterborne activities, can result in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) Has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is

expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waters. In 2001, 943,611 vessels were registered in the State of Florida. This represents an increase of 42 percent since 1993.

The large increase in human use of manatee habitat has had direct and indirect impacts on this endangered species. Direct impacts include injuries and deaths from watercraft collisions, deaths and injuries from water control structure operations, lethal and sublethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, including decreases in water quality throughout some aquatic habitats, decreases in the quantity of warm water in natural spring areas, the spread of marine debris, and general disturbance from human activities.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Reasons for Emergency Determination

In deciding to implement this emergency rule, we assessed the effects of a recent State court ruling overturning critically important, State-designated manatee protection zones in Lee County (*State of Florida Fish and Wildlife Conservation Commission vs. William D. Wilkinson, Robert W. Watson, David K. Taylor, James L. Frock (2 Cases), Jason L. Fluharty, Kenneth L. Kretsh, Harold Stevens, Richard L. Eyler, and John D. Mills*), as well as the best available information to evaluate manatee and human interactions in these areas.

Manatees are especially vulnerable to fast-moving power boats. The slower a boat is traveling, the more time a manatee has to avoid the vessel and the more time the boat operator has to detect and avoid the manatee. Nowacek *et al.* (2000) documented manatee avoidance of approaching boats. Wells *et al.* (1999) confirmed that, at a response distance of 20 meters, a manatee's time to respond to an oncoming vessel increased by at least 5 seconds if the vessel was required to travel at slow speed. Therefore, the potential for take of manatees can be greatly reduced if boats are required to travel at slow speed in areas where manatees can be expected to occur.

The water bodies encompassed in this emergency designation receive extensive manatee use either on a seasonal or year-round basis as documented in radio telemetry and aerial survey data (FWCC 2003). The areas contain feeding habitats and serve as travel corridors for manatees (FWCC 2003). They have also been regulated at either slow speed or with a 25-mile-per-hour speed limit by State government since 1999. However, a recent challenge to citations for violations of the State speed zone regulations has resulted in a State court voiding these State zones. Without this emergency Federal designation, watercraft can be expected to travel at high speeds in areas frequented by manatees, which would result in the take of one or more manatees. In fact, boat operators could inadvertently be encouraged to travel at high speeds. While the State court invalidated speed limits in the areas adjacent to navigation channels, it did not invalidate the 25-mile-per-hour speed limit in the navigation channels that traverse the affected area. Therefore, the speed limit in the navigation channel is now lower than that of the surrounding, shallower areas. As a result, shallow-draft high-speed boats capable of traveling outside the navigation channels can be expected to be operated at high speeds (greater than 25 miles per hour) in the areas more likely to be frequented by manatees.

There is a history of manatee mortalities in the area as a result of collisions with watercraft. At least 14 carcasses of manatees killed in collisions with watercraft have been recovered in or immediately adjacent to the designated areas since 1999 (FWCC 2003), and an additional carcass was recently recovered in close proximity to the site following the State court action. Necropsy revealed that the animal died of wounds from a boat collision. In areas of more seasonal use by manatees, the slow speed requirements begin on April 1. Without the emergency designation, these areas would not receive the needed protection because of the time necessary to complete the normal rulemaking process.

For these reasons, we believe that there is imminent danger of take of one or more manatees in these areas and emergency designation of a manatee refuge is necessary to prevent such taking. Manatees utilize these areas, there is a history of take at these sites, future take is imminent, protection measures are insufficient, and we do not anticipate any alternative protection measures being enacted by State or local government in sufficient time to reduce the likelihood of take occurring.

Effective Date

We are making this rule effective upon publication. In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register**. As discussed under "Reasons for Emergency Determination,'' we need to establish this manatee protection area immediately. Any delay in making this manatee refuge effective would result in further risks of manatee mortality, injury and harassment during the period of delay. In view of the finding of substantial evidence that taking of manatees is imminent and in fact has already occurred in or in close proximity to the site, we believe good cause exists to make this rule effective upon publication. For the same reasons, we also believe that we have good cause under 5 U.S.C. 553(b)(3)(B) to issue this rule without notice and public procedure. We believe such emergency action is in the public interest because of the imminent threat to manatees and the time required to complete the standard rulemaking process would probably result in additional take of manatees. This rule does not supersede

any more stringent State or local regulations.

Future Federal Actions

Once this emergency rule is in effect, the emergency designation is temporary and applies to these areas for only 120 days. We believe the danger to manatees due to watercraft collisions in the Pine Island-Estero Bay area is not only imminent, but also ongoing and year-round. Accordingly, we are preparing a proposed rule to establish an additional manatee protection area in Lee County, Florida, in accordance with 50 CFR 17.103. We anticipate publishing a proposed rule by the end of May 2004.

Definitions

Planing means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

Slow speed means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is *not* proceeding at slow speed if it is: (1) On a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft is proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.

Wake means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

Area Designated as a Manatee Refuge by Emergency Rule

Pine Island-Estero Bay Manatee Refuge

The Pine Island-Estero Bay Manatee Refuge encompasses water bodies in Lee County including portions of Matalacha Pass and San Carlos Bay south of Green Channel Marker ''77'' and north of the Intracoastal Waterway, portions of Pine Island Sound in the vicinity of York and Chino Islands, portions of Punta Rassa Cove and Shell Creek in San Carlos Bay and the mouth of the Caloosahatchee River, and portions of Estero Bay and associated water bodies. These water bodies are designated, as posted, as either slow speed or with a speed limit of 25 miles per hour, on either a seasonal or annual basis. Legal descriptions and maps are provided in the ''Regulation Promulgation'' section of this notice.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this emergency rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the emergency rule clearly stated? (2) Does the emergency rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the emergency rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the emergency rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the emergency rule easier to understand?

Send a copy of any comments that concern how we could make this emergency rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866. Because this is an emergency rule, an extensive economic analysis was not possible.

a. Based on experience with similar rulemakings in this area, this rule will not have an annual economic impact of over $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. It is not expected that any significant economic impacts would result from the establishment of a manatee refuge (approximately 30 river miles) in Lee County in the State of Florida.

The purpose of this rule is to establish an emergency manatee refuge in Lee County, Florida. We are preventing the take of manatees by controlling certain human activity in this County. For the manatee refuge, the areas are year-round or seasonal slow speed, or year-round or seasonal speed limits of 25 miles per hour. Affected waterborne activities include, but are not limited to, transiting, cruising, water skiing, fishing, marine construction, and the use of all water vehicles. This rule will impact recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We will experience increased administrative costs due to this rule. Conversely, the rule may also produce economic benefits for some parties as a result of increased manatee protection and decreased boat speeds in the manatee refuge areas.

Regulatory impact analysis requires the comparison of expected costs and benefits of the rule against a ''baseline,'' which typically reflects the regulatory requirements in existence prior to the rulemaking. For purposes of this analysis, the baseline assumes that the Pine Island-Estero Bay area has no regulating speed limits other than the 25 miles per hour in the navigation channels. The State-designated speed zones, other than in the navigation channels, have been lifted by a State Court decision. However, residents and other water users have lived with speed restrictions in this area for many years and have established business and recreational patterns on the water to accommodate their needs and desires for water-based recreation. Even though the baseline is set at no speed zones, the actual economic effects may very well be insignificant for this 120-day emergency rule because almost all users have been previously subject to these restrictions. Thus, the rule is expected to have only an incremental effect. As discussed below, the net economic impact is not expected to be significant, but cannot be monetized given available information.

The economic impacts of this rule would be due to the changes in speed zone restrictions in the manatee refuge areas. These speed zone changes are summarized in the emergency rule.

In addition to speed zone changes, the rule no longer allows for the speed zone exemption process in place under State regulations. Florida's Manatee Sanctuary Act allows the State to provide exemptions from speed zone requirements for certain commercial activities, including fishing and events such as high-speed boat races. Under State law, commercial fishermen and professional fishing guides can apply for permits granting exemption from speed zone requirements in certain counties. Speed zone exemptions were issued to 28 permit holders in the former State zones that comprise the proposed manatee refuge area.

In order to gauge the economic effect of this rule, both benefits and costs must be considered. Potential economic

benefits related to this rule include increased manatee protection and tourism related to manatee viewing, increased number of marine construction permits issued (estimated at 80 per month for family boat docks), increased fisheries health, and decreased seawall maintenance costs. Potential economic costs are related to increased administrative activities related to implementing the rule and affected waterborne activities. Economic costs are measured primarily by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. In addition, the rule may have some impact on commercial fishing because of the need to maintain slower speeds in some areas. The extension of slower speed zones in this rule is not expected to affect enough waterborne activity to create a significant economic impact (*i.e.*, an annual impact of over $100 million).

Economic Benefits

We believe that the designation of the Pine Island-Estero Bay Manatee Refuge in this rule will increase the level of manatee protection in these areas. A potential economic benefit is increased tourism resulting from an increase in manatee protection. To the extent that some portion of Florida's tourism is due to the existence of the manatee in Florida waters, the protection provided by this rule may result in an economic benefit to the tourism industry. We are not able to make an estimate of this benefit given available information.

In addition, due to reductions in boat wake associated with speed zones, property owners may experience some economic benefits related to decreased expenditures for maintenance and repair of shoreline stabilization structures (*i.e.*, seawalls along the water's edge). Speed reductions may also result in increased boater safety. Another potential benefit of slower speeds is that fisheries in these areas may be more productive because of less disturbance. These types of benefits cannot be quantified with available information.

Based on previous studies, we believe that this rule produces some economic benefits. However, given the lack of information available for estimating these benefits, the magnitude of these benefits is unknown.

Economic Costs

The economic impact of the designation of a manatee protection area results from the fact that, in certain areas, boats are required to go slower than under current conditions. Some impacts may be felt by recreationists who have to use alternative sites for their activity or who have a reduced quality of the waterborne activity experience at the designated sites because of the rule. For example, the extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. Other impacts of the rule may be felt by commercial charter boat outfits, commercial fishermen, and agencies that perform administrative activities related to implementing the rule.

Affected Recreational Activities

For some boating recreationists, the inconvenience and extra time required to cross additional slow speed areas may reduce the quality of the waterborne activity, or cause them to forgo the activity. This will manifest in a loss of consumer surplus to these recreationists. In addition, to the extent that recreationists forgo recreational activities, this could result in some regional economic impact. In this section, we examine the waterborne activities taking place in each area and the extent to which they may be affected by designation of the manatee refuges. The resulting potential economic impacts are discussed below. These impacts cannot be quantified because the number of recreationists and anglers using the designated sites is not known.

Recreationists engaging in cruising, fishing, and waterskiing may experience some inconvenience by having to go slower or use undesignated areas; however, the extension of slow speed zones is not likely to result in a significant economic impact.

Currently, not enough data are available to estimate the loss in consumer surplus that water skiers will experience. While some may use substitute sites, others may forgo the activity. The economic impact associated with these changes on demand for goods and services is not known. However, given the number of recreationists potentially affected, and the fact that alternative sites are available, it is not expected to amount to a significant economic impact. Until recently, speed zones were in place in this area and recreationists have adjusted their activities to accommodate them. It is not expected that for a 120-day emergency rule there would be a significant loss in consumer surplus from this activity.

Affected Commercial Charter Boat Activities

Various types of charter boats use the waterways in the affected counties, primarily for fishing and nature tours. The number of charter boats using the Pine Island-Estero Bay areas is currently unknown. For nature tours, the extension of slow speed zones is unlikely to cause a significant impact, because these boats are likely traveling at slow speeds. The extra time required for commercial charter boats to reach fishing grounds could reduce onsite fishing time and could result in fewer trips. The fishing activity is likely occurring at a slow speed and will not be affected. Added travel time may affect the length of a trip, which could result in fewer trips overall, creating an economic impact.

Affected Commercial Fishing Activities

Several commercial fisheries will experience some impact due to the regulation. To the extent that the regulation establishes additional speed zones in commercial fishing areas, this will increase the time spent on the fishing activity, affecting the efficiency of commercial fishing. While limited data are available to address the size of the commercial fishing industry in the manatee refuges, county-level data generally provide an upper bound estimate of the size of the industry and potential economic impact.

Given available data, the impact on the commercial fishing industry of extending slow speed zones in the Pine Island-Estero Bay area cannot be quantified. The designation will likely affect commercial fishermen by way of added travel time, which can result in an economic impact. Some of the 28 active permit holders with speed limit exemptions are commercial fishermen. However, because the manatee refuge designation will not prohibit any commercial fishing activity, and because there is a channel available for boats to travel up to 25 miles per hour in the affected areas, the Service believes that it is unlikely that the rule will result in a significant economic impact on the commercial fishing industry. It is important to note that, in 2001, the total annual value of potentially affected fisheries was approximately $8.3 million (2001$); this figure represents the economic impact on commercial fisheries in these counties in the unlikely event that the fisheries would be entirely shut down, which is not the situation associated with this rule.

Agency Administrative Costs

The cost of implementing the rule has been estimated based on historical expenditures by the Service for manatee refuges and sanctuaries established previously. The Service expects to spend approximately $600,000 (2002$) for posting and signing 15 previously designated manatee protection areas (an average of $40,000 per area). This represents the amount that the Service will pay contractors for creation and installation of manatee refuge signs. While the number and location of signs needed to post the manatee refuges is not known, the cost of manufacturing and posting signs to delineate the manatee refuges in this rule is not expected to exceed the amount being spent to post previously designated manatee protection areas (Service, 2003a). In addition, the Service anticipates that it will spend additional funds for enforcement of a staff newly designated manatee refuge for 120 days. These costs cannot be accurately estimated at this time. The costs of enforcement may include hiring and training new law enforcement agents and special agents, and the associated training, equipment, upkeep, and clerical support (Service, 2003b). Finally, there are some costs for education and outreach to inform the public about this new manatee refuge area.

While the State of Florida has 12,000 miles of rivers and 3 million acres of lakes, this rule will affect approximately 30 river miles. The speed restrictions in this rule will cause inconvenience due to added travel time for recreationists and commercial charter boats and fishermen. As a result, the rule will impact the quality of waterborne activity experiences for some recreationists, and may lead some recreationists to forgo the activity. This rule does not prohibit recreationists from participating in any activities. Alternative sites are available for all waterborne activities that may be affected by this rule. The distance that recreationists may have to travel to reach an un-designated area varies. The regulation will likely impact some portion of the charter boat and commercial fishing industries in these areas as well. The inconvenience of having to go somewhat slower in some areas may result in changes to commercial and recreational behavior, resulting in some regional economic impacts. Given available information, the net economic impact of designating the manatee refuge is not expected to be significant (*i.e.*, an annual economic impact of over $100 million). While the level of economic benefits that may be attributable to the manatee refuge is unknown, these benefits would cause a reduction in the economic impact of the rule.

b. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are designating the Pine Island-Estero Bay area, where previously existing State designations have been eliminated, to protect the manatee population in that area.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restriction to existing human uses of the sites would result from this rule. No entitlements, grants, user fees, loan programs or effects on the rights and obligations of their recipients are expected to occur.

d. This rule does not raise novel legal or policy issues. We have previously established other manatee protection areas.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

In order to determine whether the rule will have a significant economic effect on a substantial number of small entities, we utilize available information on the industries most likely to be affected by the designation of the manatee refuge. Currently no information is available on the specific number of small entities that are potentially affected. However, 28 active permit holders were exempt from the speed limits in the proposed refuge area. Since these zones have been in place since 1999 and people have adjusted and there were no other permit holders, it is reasonable to expect that the emergency rule will impact only the 28 permit holders in the former State speed zones. They are primarily commercial fishing boats and fishing guides. Both would be considered small businesses. The 28 permit holders had State exemptions from the speed restrictions based on an application that stated they would suffer at least a 25 percent income loss without the permit. The usual income level for these businesses is not known, however a 25 percent loss of business income is significant regardless of the level of business income. We acknowledge that there could be a significant loss of income to those permit holders that rely on speed to carry out their business activities, however, the Service believes that the 28 permit holders do not constitute a substantial number.

This rule will add to travel time for recreational boating and commercial activities resulting from extension of existing speed zones. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic effect on small entities resulting from changes in recreational use patterns will not be significant. The economic effects on most small businesses resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 25 mph in the navigation channels, we believe that any economic effect on small commercial fishing or charter boat entities (other than the 28 permit holders) will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

The employment characteristics of Lee County are shown in Table 1 for the year 1997. We included the following SIC (Standard Industrial Classification) categories, because they include businesses most likely to be directly affected by the designation of a manatee refuge:

- Fishing, hunting, trapping (SIC 09);
- Water transportation (SIC 44);
- Miscellaneous retail (SIC 59);
- Amusement and recreation services (SIC 79);
- Non-classifiable establishments (NCE).

TABLE 1.—EMPLOYMENT CHARACTERISTICS OF LEE COUNTY IN FLORIDA—1997 INCLUDES SIC CODES 09, 44, 59, 79, AND NCE [a])

County	Total Mid-March employment [b] (All industries)	Mid-March establishment [b] (select SIC (Codes)	Total establishments (all industries)	Select SIC Codes (Includes SIC Codes 09, 44, 59, 79, and NCE [a])				
				Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20+ employees)
Lee	135,300	7,734	11,386	974	602	193	92	87

Source: U.S. Census County Business Patterns (*http://www.census.gov/epcd/cbp/view/cbpview.html*).
[a] Descriptions of the SIC codes included in this table as follows:
SIC 09—Fishing, hunting, and trapping.
SIC 44—Water transportation.
SIC 59—Miscellaneous retail service division.
SIC 79—Amusement and recreation services.
NCE—Non-classifiable establishments division.
[b] Table provides the high-end estimate whenever the Census provides a range of mid-March employment figures for select counties and SIC codes.

As shown in Table 1, the vast majority (over 80 percent) of these business establishments in Lee County have fewer than ten employees, with the largest number of establishments employing fewer than four employees. Any economic impacts associated with this rule will affect some proportion of these small entities.

Since the emergency designation is for a manatee refuge, which only requires a reduction in speed, we do not believe the designation would cause significant economic effect on a substantial number of small businesses. Currently available information does not allow us to quantify the number of small business entities such as charter boats or commercial fishing entities that may incur direct economic impacts due to the inconvenience of added travel times resulting from the rule but it is safe to assume that the current 28 permit holders may constitute the affected parties for a 120-day rule. The Service does not believe the 28 permit holders constitute a substantial number. If a future rulemaking establishes the Pine Island-Estero Bay as a permanent manatee refuge, public comments on a proposed rule will be used for further refinement of the impact on small entities and the general public. In addition, the inconvenience of slow speed zones may cause some recreationists to change their behavior, which may cause some loss of income to some small businesses. The number of recreationists that will change their behavior, and how their behavior will change, is unknown; therefore, the impact on potentially affected small business entities cannot be quantified. However, because boaters will experience only minimal added travel time in most affected areas and the fact that speed zones were in place until recently, we believe that this designation will not cause a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804 (2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this rule may cause some inconvenience in the form of added travel time for recreationists and commercial fishing and charter boat businesses because of speed restrictions in manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the affected county. An unknown portion of the establishments shown in Table 1 could be affected by this rule. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns will not be significant. The economic impacts on small business resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 25 miles per hour in the navigational channels, we believe that any economic impact on most small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. The recreational charter boat and commercial fishing industries may be affected by lower speed limits for some areas when traveling to and from fishing grounds. However, because of the availability of 25-miles-per-hour navigational channels, this impact is likely to be limited. Further, only 28 active permit holders were exempt from the former State speed zones. The impact will most likely stem from only these permit holders.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists and commercial users due to added travel time, but the resulting economic impacts are believed to be minor and will not interfere with the normal operation of businesses in the affected counties. Added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries, while imposing regulations for at least a limited period, will not impose obligations on State or local governments that have not previously existed.

b. This rule will not produce a Federal mandate of $100 million or

greater in any year. As such, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The manatee protection areas are located over publicly-owned submerged water bottoms.

Federalism

In accordance with Executive Order 13132, this rule does not have significant federalism effects. A federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The regulation will not impose new record keeping or reporting requirements on State or local governments, individuals, and businesses in it or organizations.

National Environmental Policy Act

We have analyzed this rule in accordance with criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An Environmental Assessment has been prepared and is available for review by written request to the Field Supervisor (*see* **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized tribes on a government-to-government basis. We have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to continue their operation as they have in the past, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is David Hankla (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub.L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.108 by adding paragraph (c)(15) as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) * * *

(15) *The Pine Island-Estero Bay Manatee Refuge.* (i) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, south of a line that bears 90° and 270° from Matlacha Pass Green Channel Marker ''77'' (approximate latitude 26°40′00″ North, approximate longitude 82°06′00″ West), and north of Pine Island Road (State Road No. 78), excluding:

(A) The portion of the marked channel otherwise designated in paragraph (c)(15)(iii) of this section;

(B) All waters of Buzzard Bay east and northeast of a line beginning at a point (approximate latitude 26°40′00″ North, approximate longitude 82°05′20″ West) on the southwest shoreline of an unnamed mangrove island east of Matlacha Pass Green Channel Marker ''77'' and bearing 219° to the northeasternmost point (approximate latitude 26°39′58″ North, approximate longitude 82°05′23″ West) of another unnamed mangrove island, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39′36″ North, approximate longitude 81°05′09″ West), then bearing 115° to the westernmost point (approximate latitude 26°39′34″ North, approximate longitude 82°05′05″ West) of the unnamed mangrove island to the southeast, then running along the western shoreline of said island to its southwesternmost point (approximate latitude 26°39′22″ North, approximate longitude 82°04′53″ West), then bearing 123° to the northwesternmost point (approximate latitude 26°39′21″ North, approximate longitude 82°04′52″ West) of an unnamed mangrove island, then running along the western shoreline of said island to its southeasternmost point (approximate latitude 26°39′09″ North, approximate longitude 82°04′44″ West), then bearing 103° to the northwesternmost point (approximate latitude 26°39′08″ North, approximate longitude 82°04′41″ West) of a peninsula on the unnamed mangrove island to the southeast, then running along the southwestern shoreline of said island to its southeasternmost point (approximate latitude 26°38′51″ North, approximate longitude 82°04′18″ West), then bearing 99° to the southernmost point (approximate latitude 26°38′50″ North, approximate longitude 82°04′03″ West) of the unnamed mangrove island to the east, then bearing 90° to the line's terminus at a point (approximate latitude 26°38′50″ North, approximate

longitude 82°03′55″ West) on the eastern shoreline of Matlacha Pass; and

(C) All waters of Pine Island Creek and Matlacha Pass north of Pine Island Road (State Road No. 78) and west and southwest of a line beginning at a point (approximate latitude 26°39′29″ North, approximate longitude 82°06′29″ West) on the western shoreline of Matlacha Pass and bearing 160° to the westernmost point (approximate latitude 26°39′25″ North, approximate longitude 82°06′28″ West) of an unnamed island, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°39′18″ North, approximate longitude 82°06′24″ West), then bearing 128° to the northernmost point (approximate latitude 26°39′12″ North, approximate longitude 82°06′17″ West) of an unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39′00″ North, approximate longitude 82°06′09″ West), then bearing 138° to a point (approximate latitude 26°38′45″ North, approximate longitude 82°05′53″ West) on the northern shoreline of Bear Key, then running along the northern shoreline of Bear Key to its easternmost point (approximate latitude 26°38′44″ North, approximate longitude 82°05′46″ West), then bearing 85° to the westernmost point (approximate latitude 26°38′45″ North, approximate longitude 82°05′32″ West) of Deer Key, then running along the northern shoreline of Deer Key to its easternmost point (approximate latitude 26°38′46″ North, approximate longitude 82°05′22″ West), then bearing 103° to the northwesternmost point (approximate latitude 26°38′45″ North, approximate longitude 82°05′17″ West) of the unnamed mangrove island to the east, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°38′30″ North, approximate longitude 82°05′04″ West), then bearing 106° to the westernmost point (approximate latitude 26°38′30″ North, approximate longitude 82°04′57″ West) of the unnamed island to the southeast, then running along the northern and eastern shorelines of said island to a point (approximate latitude 26°38′23″ North, approximate longitude 82°04′51″ West) on its eastern shoreline, then bearing 113° to the northernmost point of West Island (approximate latitude 26°38′21″ North, approximate longitude 82°04′37″ West), then running along the western shoreline of West Island to the point where the line intersects Pine Island Road (State Road No. 78).

(ii) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, St. James Creek, and San Carlos Bay, south of Pine Island Road (State Road No. 78), north of a line 500 feet northwest of and parallel to the main marked channel of the Intracoastal Waterway, west of a line that bears 302° from Intracoastal Waterway Green Channel Marker ''99'' (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), and east of a line that bears 360° from Intracoastal Waterway Red Channel Marker ''10'' (approximate latitude 26°29′16″ North, approximate longitude 82°03′35″ West), excluding:

(A) The portions of the marked channels otherwise designated in paragraphs (c)(15) (iv) and (v) of this section;

(B) All waters of Matlacha Pass south of Pine Island Road (State Road No. 78) and west of the western shoreline of West Island and a line beginning at the southernmost point (approximate latitude 26°37′25″ North, approximate longitude 82°04′17″ West) of West Island and bearing 149° to the northernmost point (approximate latitude 26°37′18″ North, approximate longitude 82°04′12″ West) of the unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southernmost point (approximate latitude 26°36′55″ North, approximate longitude 82°04′02″ West), then bearing 163° to the line's terminus at a point (approximate latitude 26°36′44″ North, approximate longitude 82°03′58″ West) on the eastern shoreline of Little Pine Island;

(C) All waters of Matlacha Pass, Pontoon Bay, and associated embayments south of Pine Island Road (State Road No. 78) and east of a line beginning at a point (approximate latitude 26°38′12″ North, approximate longitude 82°03′46″ West) on the northwestern shoreline of the embayment on the east side of Matlacha Pass, immediately south of Pine Island Road and then running along the eastern shoreline of the unnamed island to the south to its southeasternmost point (approximate latitude 26°37′30″ North, approximate longitude 82°03′22″ West), then bearing 163° to the northwesternmost point of the unnamed island to the south, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°37′15″ North, approximate longitude 82°03′15″ West), then bearing 186° to the line's terminus at a point (approximate latitude 26°37′10″ North, approximate longitude 82°03′16″ West) on the eastern shoreline of Matlacha Pass;

(D) All waters of Pine Island Creek south of Pine Island Road (State Road No. 78); and all waters of Matlacha Pass, Rock Creek, and the Mud Hole, west of a line beginning at a point (approximate latitude 26°33′52″ North, approximate longitude 82°04′53″ West) on the western shoreline of Matlacha Pass and bearing 22° to a point (approximate latitude 26°34′09″ North, approximate longitude 82°04′45″ West) on the southern shoreline of the unnamed island to the northeast, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34′15″ North, approximate longitude 82°04′39″ West) on its northeastern shoreline, then bearing 24° to a point (approximate latitude 26°34′21″ North, approximate longitude 82°04′36″ West) on the southern shoreline of the large unnamed island to the north, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34′31″ North, approximate longitude 82°04′29″ West) on its eastern shoreline, then bearing 41° to the southernmost point (approximate latitude 26°34′39″ North, approximate longitude 82°04′22″ West) of another unnamed island to the northeast, then running along the eastern shoreline of said island to its northwesternmost point (approximate latitude 26°35′22″ North, approximate longitude 82°04′07″ West), then bearing 2° to the southernmost point (approximate latitude 26°35′32″ North, approximate longitude 82°04′07″ West) of the unnamed island to the north, then running along the eastern shoreline of said island to its northernmost point (approximate latitude 26°35′51″ North, approximate longitude 82°03′59″ West), then bearing 353° to the line's terminus at a point (approximate latitude 26°36′08″ North, approximate longitude 82°04′01″ West) on the eastern shoreline of Little Pine Island; and

(E) All waters of Punta Blanca Bay and Punta Blanca Creek, east of the eastern shoreline of Matlacha Pass and east and north of the eastern and northern shorelines of San Carlos Bay.

(iii) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in Matlacha Pass south of Green Channel Marker ''77'' (approximate latitude 26°40′00″ North, approximate longitude 82°06′00″ West) and north of a line perpendicular to the channel at a point in the channel ¼ mile northwest of the Pine Island Road Bridge (State Road No. 78).

(iv) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in

Matlacha Pass south of a line perpendicular to the channel at a point in the channel ¼ mile southeast of the Pine Island Road Bridge (State Road No. 78), and north of a line 500 feet northwest of and parallel to the main marked channel of the Intracoastal Waterway (just north of Green Channel Marker ''1'').

(v) Watercraft may not exceed 25 miles per hour, all year, in all waters within the marked channel in Matlacha Pass that intersects the main Matlacha Pass channel near Green Channel Marker ''15'' (approximate latitude 26°31′57″ North, approximate longitude 82°03′38″ West) and intersects the main marked channel of the Intracoastal Waterway near Green Channel Marker ''101'' (approximate latitude 26°30′39″ North, approximate longitude 82°01′00″ West).

(vi) Watercraft are required to proceed at slow speed from April 1 through November 15 in all canals and boat basins of St. James City and the waters known as Long Cut and Short Cut; and all waters of Pine Island Sound and San Carlos Bay south of a line beginning at the southernmost tip (approximate latitude 26°31′28″ North, approximate longitude 82°06′19″ West) of a mangrove peninsula on the western shore of Pine Island approximately 2200 feet north of Galt Island and bearing 309° to the southeasternmost point (approximate latitude 26°31′32″ North, approximate longitude 82°06′25″ West) of another mangrove peninsula, then running along the southern shoreline of said peninsula to its southwesternmost point (approximate latitude 26°31′40″ North, approximate longitude 82°06′38″ West), then bearing 248° to a point (approximate latitude 26°31′40″ North, approximate longitude 82°06′39″ West) on the eastern shoreline of an unnamed mangrove island, then running along the southern shoreline of said island to its southwesternmost point (approximate latitude 26°31′39″ North, approximate longitude 82°06′44″ West), then bearing 206° to the line's terminus at the northernmost point of the Mac Keever Keys (approximate latitude 26°31′09″ North, approximate longitude 82°07′09″ West), east of a line beginning at said northernmost point of the Mac Keever Keys and running along and between the general contour of the western shorelines of said keys to a point (approximate latitude 26°30′27″ North, approximate longitude 82°07′08″ West) on the southernmost of the Mac Keever Keys, then bearing 201° to a point (approximate latitude 26°30′01″ North, approximate longitude 82°07′19″ West) approximately 150 feet due east of the southeasternmost point of Chino Island, then bearing approximately 162° to Red Intracoastal Waterway Channel Marker ''22'' (approximate latitude 26°28′57″ North, approximate longitude 82°06′55″ West), then bearing approximately 117° to the line's terminus at Red Intracoastal Waterway Channel Marker ''20'' (approximate latitude 26°28′45″ North, approximate longitude 82°06′38″ West), north of a line beginning at said Red Intracoastal Waterway Channel Marker ''20'' and bearing 86° to a point (approximate latitude 26°28′50″ North, approximate longitude 82°05′48″ West) ¼ mile south of York Island, then running parallel to and ¼ mile south of the general contour of the southern shorelines of York Island and Pine Island to the line's terminus at a point on a line bearing 360° from Red Intracoastal Waterway Channel Marker ''10'' (approximate latitude 26°29′16″ North, approximate longitude 82°03′35″ West), and west and southwest of the general contour of the western and southern shorelines of Pine Island and a line that bears 360° from said Red Intracoastal Waterway Channel Marker ''10,'' excluding the portion of the marked channel otherwise designated in paragraph (c)(15)(vii) of this section.

(vii) Watercraft may not exceed 25 miles per hour from April 1 through November 15 in all waters of the marked channel that runs south of the power lines from the Cherry Estates area of St. James City into Pine Island Sound, east of the western boundary of the zone designated in 17.108(c)(15)(vi), and west of a line perpendicular to the power lines that begins at the easternmost point (approximate latitude 26°30′25″ North, approximate longitude 82°06′15″ West) of the mangrove island on the north side of the power lines approximately 1800 feet southwest of the Galt Island Causeway.

(viii) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and Punta Rassa Cove east of a line that bears 352° from the northernmost tip of the northern peninsula on Punta Rassa (approximate latitude 26°29′44″ North, approximate longitude 82°00′33″ West), and south of a line that bears 122° from Intracoastal Waterway Green Channel Marker ''99'' (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), including all waters of Shell Creek and associated waterways.

(ix) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and the Caloosahatchee River, including the residential canals of Cape Coral, northeast of a line that bears 302° and 122° from Intracoastal Waterway Green Channel Marker ''99'' (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), west of a line that bears 346° from Intracoastal Waterway Green Channel Marker ''93'' (approximate latitude 26°31′37″ North, approximate longitude 81°59′46″ West), and north and northwest of the general contour of the northwestern shoreline of Shell Point and a line that bears approximately 74° from the northernmost tip (approximate latitude 26°31′31″ North, approximate longitude 81°59′57″ West) of Shell Point to said Intracoastal Waterway Green Channel Marker ''93,'' excluding the Intracoastal Waterway between markers ''93'' and ''99'' (which is already designated as a Federal manatee protection area, requiring watercraft to proceed at slow speed, and is not impacted by this rulemaking).

(x) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hell Peckney Bay southeast of Hurricane Bay, northeast of the northern shorelines of Julies Island and the unnamed island immediately northwest of Julies Island and a line that bears 312° from the northwesternmost point of Julies Island (approximate latitude 26°26′37″ North, approximate longitude 81°54′57″ West), northwest of Estero Bay, and southwest of a line beginning at the southernmost point (approximate latitude 26°27′23″ North, approximate longitude 81°55′11″ West) of an unnamed mangrove peninsula in northwest Hell Peckney Bay and bearing 191° to the northernmost point (approximate latitude 26°27′19″ North, approximate longitude 81°55′11″ West) of an unnamed mangrove island, then running along the northern shoreline of said island to its southeasternmost point (approximate latitude 26°27′11″ North, approximate longitude 81°55′05″ West), then bearing 115° to a point (approximate latitude 26°27′03″ North, approximate longitude 81°54′47″ West) on the northwest shoreline of an unnamed mangrove island, then running along the northern shoreline of said island to its northeasternmost point (approximate latitude 26°27′02″ North, approximate longitude 81°54′33″ West), and then bearing 37° to the line's terminus at the westernmost point of an unnamed mangrove peninsula in eastern Hell Peckney Bay.

(xi) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hendry Creek south of a line that bears 270° from a point (approximate latitude 26°28′40″ North, approximate longitude 81°52′56″ West) on the eastern shoreline of Hendry

Creek; and all waters of Estero Bay southeast and east of Hell Peckney Bay, a line that bears 340° from a point (approximate latitude 26°25′56″ North, approximate longitude 81°54′25″ West) on the northern tip of an unnamed mangrove peninsula on the northeastern shoreline of Estero Island, and the northern shoreline of Estero Island, south of Hendry Creek and a line that bears 135° and 315° from Red Channel Marker ''18'' (approximate latitude 26°27′46″ North, approximate longitude 81°52′00″ West) in Mullock Creek, and north of a line that bears 72° from the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, including the waters of Buccaneer Lagoon at the southern end of Estero Island, but excluding:

(A) The portions of the marked channels otherwise designated in paragraph (c)(15)(xiii) of this section;

(B) The Estero River; and

(C) To waters of Big Carlos Pass east of a line beginning at a point (approximate latitude 26°24′34″ North, approximate longitude 81°53′05″ West) on the eastern shoreline of Estero Island and bearing 36° to a point (approximate latitude 26°24′40″ North, approximate longitude 81°53′00″ West) on the southern shoreline of Coon Key, south of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24′39″ North, approximate longitude 81°52′34″ West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and west of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the southern shoreline of said unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island.

(xii) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Estero Bay and Big Hickory Bay south of a line that bears 72° from the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, east of the centerline of State Road No. 865 (but including the waters of the embayment on the eastern side of Black Island and the waters inshore of the mouth of Big Hickory Pass that are west of State Road No. 865), and north of a line that bears 90° from a point (approximate latitude 26°20′51″ North, approximate longitude 81°50′33″ West) on the eastern shoreline of Little Hickory Island, excluding Spring Creek and the portions of the marked channels otherwise designated under 17.108 (c)(15)(xiii) and the portion of Hickory Bay designated in paragraph (c)(15)(xiii) of this section.

(xiii) Watercraft may not exceed 25 miles per hour all year in:

(A) All waters of Big Hickory Bay north of a line that bears 90° from a point (approximate latitude 26°20′51″ North, approximate longitude 81°50′33″ West) on the eastern shoreline of Little Hickory Island, west of a line beginning at a point (approximate latitude 26°20′48″ North, approximate longitude 81°50′24″ West) on the southern shoreline of Big Hickory Bay and bearing 338(to a point (approximate latitude 26°21′39″ North, approximate longitude 81°50′48″ West) on the water in the northwestern end of Big Hickory Bay near the eastern end of Broadway Channel, south of a line beginning at said point on the water in the northwestern end of Big Hickory Bay and bearing 242(to the northernmost point (approximate latitude 26°21′3″ North, approximate longitude 81°50′50″ West) of the unnamed mangrove island south of Broadway Channel, and east of the eastern shoreline of said mangrove island and a line beginning at the southernmost point of said island (approximate latitude 26°21′07″ North, approximate longitude 81°50′58″ West) and bearing 167(to a point on Little Hickory Island (approximate latitude 26°21′03″ North, approximate longitude 81°50′57″ West);

(B) All waters of the main marked North-South channel in northern Estero Bay from Green Channel Marker ''37'' (approximate latitude 26°26′02″ North, approximate longitude 81°54′29″ West) to Green Channel Marker ''57'' (approximate latitude 26°25′08″ North, approximate longitude 81°53′29″ West);

(C) All waters of the main marked North-South channel in southern Estero Bay south of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the southern shoreline of the unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, and north and east of Red Channel Marker ''62'' (approximate latitude 26° 21′31″ North, approximate longitude 81° 51′20″ West) in Broadway Channel;

(D) All waters within the portion of the marked channel leading to the Gulf of Mexico through New Pass, west of the North-South channel and east of State Road No. 865; all waters of the marked channel leading to Mullock Creek north of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24′39″ North, approximate longitude 81°52′34″ West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and south of Red Channel Marker ''18'' (approximate latitude 26°27′46″ North, approximate longitude 81°52′00″ West);

(E) All waters of the marked channel leading from the Mullock Creek Channel to the Estero River, west of the mouth of the Estero River. (This designation only applies if a channel is marked in accordance with permits issued by all applicable state and federal authorities. In the absence of a properly permitted channel, this area is as designated under paragraph (c)(15)(xi) of this section);

(F) All waters of the marked channel commonly known as Alternate Route Channel, with said channel generally running between Channel Marker ''1'' (approximate latitude 26°24′29″ North, approximate longitude 81°51′53″ West) and Channel Marker ''10'' (approximate latitude 26°24′00″ North, approximate longitude 81°51′09″ West);

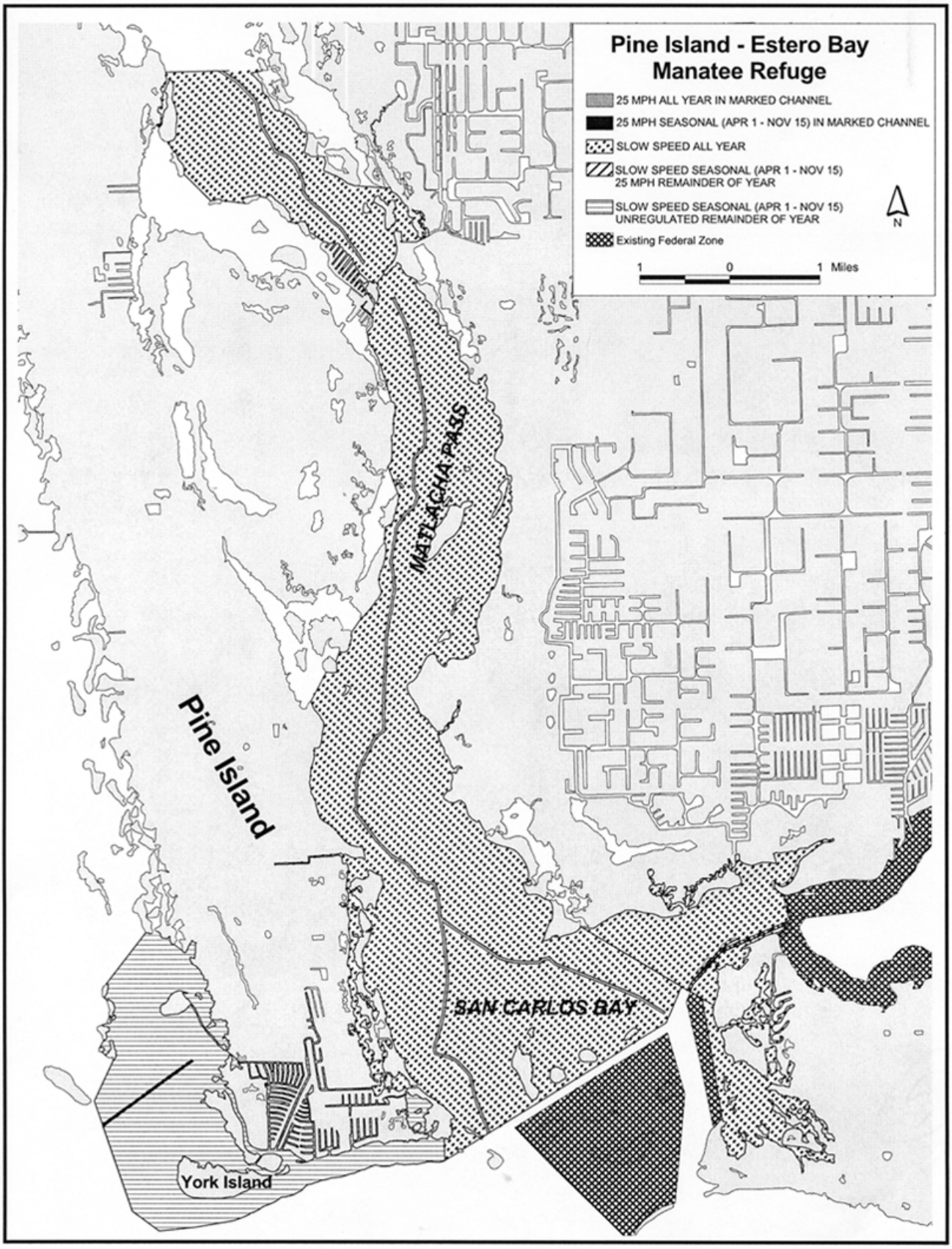
(G) All waters of the marked channel commonly known as Coconut Channel, with said channel generally running between Channel Marker ''1'' (approximate latitude 26°23′44″ North, approximate longitude 81°50′55″ West) and Channel Marker ''23'' (approximate latitude 26°24′00″ North, approximate longitude 81°50′30″ West);

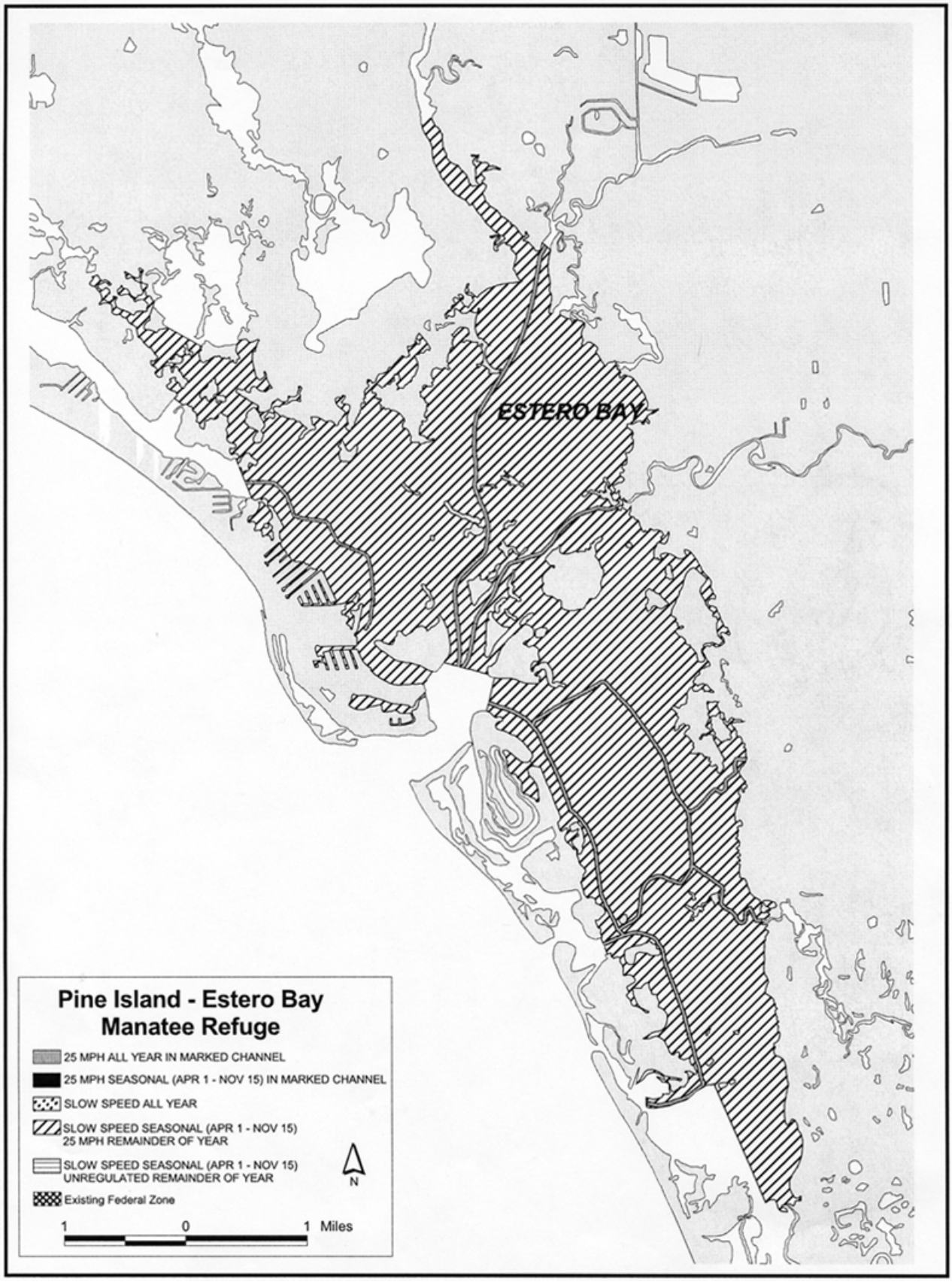
(H) All waters of the marked channel commonly known as Southern Passage Channel, with said channel generally running between Channel Marker ''1'' (approximate latitude 26°22′58″ North, approximate longitude 81°51′57″ West) and Channel Marker ''22'' (approximate latitude 26°23′27″ North, approximate longitude 81°50′46″ West); and

(I) All waters of the marked channel leading from the Southern Passage Channel to Spring Creek, west of the mouth of Spring Creek.

(xiv) Maps of the Pine Island-Estero Bay Manatee Refuge follow:

BILLING CODE 4310–55–P


Pine Island - Estero Bay
Manatee Refuge
25 MPH ALL YEAR IN MARKED CHANNEL
25 MPH SEASONAL (APR 1 - NOV 15) IN MARKED CHANNEL
SLOW SPEED ALL YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
25 MPH REMAINDER OF YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
UNREGULATED REMAINDER OF YEAR
Existing Federal Zone
N
1 0 1 Miles
MATLACHA PASS
Pine Island
SAN CARLOS BAY
York Island


ESTERO BAY
Pine Island - Estero Bay
Manatee Refuge
25 MPH ALL YEAR IN MARKED CHANNEL
25 MPH SEASONAL (APR 1 - NOV 15) IN MARKED CHANNEL
SLOW SPEED ALL YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
25 MPH REMAINDER OF YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
UNREGULATED REMAINDER OF YEAR
Existing Federal Zone
N
1 0 1 Miles

Dated: March 30, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–7828 Filed 4–6–04; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.040212056–4101–02; I.D. 020604B]

RIN 0648–AR89

Fisheries of the Northeastern United States; Monkfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS implements measures to establish target total allowable catch (TAC) levels for the monkfish fishery for the 2004 fishing year (FY), and adjust trip limits and days-at-sea (DAS) for limited access monkfish vessels fishing in the Southern Fishery Management Area (SFMA) based upon the target TAC setting and trip limit and DAS adjustment methods established in Framework Adjustment 2 (Framework 2) to the Monkfish Fishery Management Plan (FMP). Based on these methods, this final rule establishes FY 2004 target TACs of 16,968 mt for the Northern Fishery Management Area (NFMA), and 6,772 mt for the SFMA; adjusts the trip limits for vessels fishing in the SFMA to 550 lb (250 kg) tail weight per DAS for limited access Category A and C vessels, and 450 lb (204 kg) tail weight per DAS for limited access Category B and D vessels; and restricts the FY 2004 DAS available for monkfish limited access vessels fishing in the SFMA to 28 DAS.

DATES: Effective May 7, 2004.

ADDRESSES: Copies of the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available upon request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298. Copies of the Environmental Assessment (EA) prepared for Framework Adjustment 2 to the FMP are available upon request from Paul Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281–9103, fax (978) 281–9135, e-mail *Allison.Ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC), with the NEFMC having the administrative lead. Framework Adjustment 2, which became effective on May 1, 2003 (68 FR 22325; April 28, 2003), implemented a target TAC setting method that is based upon the relationship between the 3–year running average of the NMFS fall trawl survey biomass index (3–year average biomass index) and established annual biomass index targets (annual index target). The annual index targets are based on 10 equal increments between the 1999 biomass index (the start of the rebuilding program) and the biomass target (Btarget), which is to be achieved by 2009 according to the rebuilding plan established in the FMP. According to this method, annual target TACs are set based on the ratio of the observed biomass index to the annual index target applied to the monkfish landings for the previous fishing year.

A proposed rule was published in the **Federal Register** on February 24, 2004 (69 FR 8364), with public comment accepted through March 10, 2004. The measures contained in this final rule are unchanged from those published in the proposed rule. A complete discussion of the methods used to establish the target TACs, trip limits, and DAS restrictions for FY 2004 appeared in the preamble to the proposed rule and is not repeated here.

This action establishes annual target TACs of 16,968 mt for the NFMA, and 6,772 mt for the SFMA for FY 2004. In addition, this action adjusts the trip limits for vessels fishing in the SFMA to 550 lb (250 kg) tail weight per DAS for limited access Category A and C vessels, and 450 lb (204 kg) tail weight per DAS for limited access Category B and D vessels. In order to prevent exceeding the target TAC for the SFMA, this action restricts the FY 2004 DAS available for monkfish limited access vessels fishing in the SFMA to 28 DAS, although the remaining 12 DAS could be fished in the NFMA under the regulations applicable to that area.

The target TAC setting process, and the trip limit and DAS adjustment procedures established in Framework 2 cannot be changed by this action. A change to these procedures would require further action on behalf of the NEFMC and MAFMC (Councils) in the form of a framework adjustment, or an amendment to the FMP, both of which are public processes. The regulations governing framework adjustments to the FMP, specified at § 648.96(c)(3), require at least one initial meeting of the Monkfish Oversight Committee (Committee) or one of the Councils, and at least two Council meetings, one at each Council. Because this action follows the annual adjustment procedures for the monkfish fishery, specified under § 648.96(b), such meetings are not required, and, therefore, were not conducted.

Comments and Responses

Three public comments were received on the proposed rule.

Comment 1: One commenter requested that NMFS reduce the target TAC for the NFMA and SFMA to 8,000 mt and 3,000 mt, respectively, and continue to reduce the target TACs for each area by 10 percent in each subsequent year.

Response: Framework 2 specified a target TAC setting method based upon a series of annual biomass index targets that gradually increase to achieve the Btarget established in the FMP. This process, developed by the Council and approved by NMFS, complies with the rebuilding goals of the FMP. To reduce the target TACs below those generated through this target TAC setting method would not allow for harvesting at optimum yield and is not an option authorized under existing regulations specifying the annual adjustment process for setting target TACs.

Comment 2: NMFS received two letters expressing lack of support for the reduction in DAS available for vessels fishing in the SFMA. These letters also contained additional comments relating to the proposed DAS reduction. In one letter, the commenter stated that the estimated economic impact of 27–percent reduction in vessel revenue for vessels from MA and NJ that fish only in the SFMA is unreasonable, given that the management measures for the NFMA have gone unchanged each year. In the second letter, the commenter requested that NMFS utilize information from the 2003 FY, once this information is available, to conduct an additional DAS analysis for the purpose of developing and implementing a separate action that would readjust DAS in the SFMA during the 2004 FY.

Response: In addition to implementing target TAC setting procedures, Framework 2 also

established a trip limit and DAS adjustment process that utilizes information from the most recent complete fishing year at the time the target TACs are determined. For this action, FY 2002 is the most recent fishing year and, thus, represents the best scientific information available. Similar to the target TAC setting procedures, the trip limit and DAS adjustment process established in Framework 2 is codified in the regulations. This process was established in order to prevent the annual target TACs from being exceeded, helping ensure that the stock rebuilding objective of the FMP is achieved. A modification to this regulation is outside the scope of the current rulemaking.

As noted in the preamble to the proposed rule, the 3–year average biomass index for the NFMA (2.03 kg/tow) is 36 percent above the annual index target for 2003 (1.49 kg/tow). Thus, monkfish stock biomass in the NFMA is steadily increasing, and is well above the biomass threshold ($B_{threshold}$) of 1.25 kg/tow for the NFMA, which is used to determine if the stock is overfished. Furthermore, reductions in Northeast (NE) multispecies DAS allocations that are expected beginning May 1, 2004, under Amendment 13 to the NE Multispecies FMP, will impact the ability of limited access monkfish vessels to target monkfish in the NFMA. Because stock biomass is increasing, and because measures in the NE multispecies fishery restrict the ability of limited access monkfish vessels to target monkfish in the NFMA, NMFS has determined that the implementation of a trip limit or reductions in DAS are unnecessary for the NFMA in order to prevent the target TAC from being exceeded.

Classification

The Administrator, Northeast Region, NMFS (Regional Administrator), determined that this action to establish target TACs, trip limits, and DAS restrictions for the 2004 monkfish fishery is necessary for the conservation and management of the monkfish fishery, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law.

The EA for Framework 2 contained a complete analysis of the target TAC setting method being utilized in this action to established target TACs, trip limits, and DAS restrictions for FY 2004. In addition, the EA contained an analysis of the impacts of a range of potential target TACs for FY 2004. This action updates the previous Finding of No Significant Impact (FONSI) statement contained in the EA for Framework 2, and signed on April 21, 2003, with a new FONSI that references updated information on the monkfish fishery, including the target TACs, trip limits, and DAS restrictions for FY 2004. The updated FONSI states that this action does not change the circumstances under which the previous EA was prepared, and that all of the information and analysis contained in the EA for Framework 2 are applicable to this action. Furthermore, the updated FONSI states that this action does not change the determinations made in the EA for Framework 2.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 604(a) of the Regulatory Flexibility Act (RFA), NMFS prepared an FRFA for this action, which incorporates the IRFA, any comments on the IRFA and the responses to those comments, and a summary of the analyses prepared in support of this final rule. Copies of the FRFA and IRFA are available from the Regional Administrator (see **ADDRESSES**). The preamble of the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here in its entirety. A summary of the FRFA is provided in the following paragraphs.

A description of the reasons why action by the agency is being taken and the objectives of this action are explained in the preamble of the proposed rule and this final rule and are not repeated here. This action does not contain any reporting, recordkeeping, or other compliance requirements. This action is taken under the authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Public Comments

Three public comments were received on the proposed rule, but only one comment referenced the economic impacts of the proposed measures. This comment is summarized and responded to under Comment 2 in the Comments and Responses section of the preamble of this final rule. No changes to the proposed regulations are necessary as a result of this comment because the target TAC setting process, and the trip limit and DAS adjustment process, are not subject to modification. Thus, the economic impacts of this final rule are unavoidable.

Number of Small Entities Impacted

This action would impact approximately 390 monkfish vessels that fish all or part of the fishing year in the SFMA, based on vessel activity reports for the 2002 FY. All of the these vessels are considered small entities under the Small Business Administration's size standards for small fishing businesses ($3.5 million in gross sales).

Minimizing Economic Impacts on Small Entities

The target TAC setting alternative adopted in Framework 2 to the FMP, and utilized in this action, is less precautionary than the other alternatives considered in Framework 2, but minimizes impacts to small entities to the greatest extent. This target TAC setting method minimizes impacts to small entities because it maximizes benefits to the fishing industry by providing the NEFMC and MAFMC (Councils) with the ability to increase the target TAC in response to an increase in monkfish stock biomass, in the absence of a reliable estimate of fishing mortality (F), but with a cap on that increase.

The target TAC setting method is narrowly prescribed and provides little legal latitude in considering other alternatives or associated management measures. The annual target TAC setting method established in Framework 2 is based on a formula that integrates an annual biomass index target with the 3–year running average of the NMFS fall trawl survey and the monkfish landings for the previous fishing year. Therefore, the setting of target TACs using this method is non-discretionary. Another option, considered but rejected by the Councils in Framework 2, for establishing 2004 target TACs would use current F in relation to the fishing mortality threshold ($F_{threshold}$). This option was determined to be unreasonable because current estimates of F are too imprecise to set target TACs and make a status determination regarding overfishing. Framework 2 also established a formulaic method for adjusting trip limits and DAS for the SFMA based on the target TACs. Thus, there are no alternatives to the trip limits and DAS restrictions that can be legally implemented for the SFMA in this action.

Based upon available data, NMFS estimated the average economic impact on vessels that fish only in the NFMA, those that fish in both management areas, and those that fish exclusively in the SFMA. According to this analysis, under this final rule, vessels fishing

exclusively in the NFMA will not be affected by reduced trip limits and DAS restrictions proposed for the SFMA. The average impact of this action on vessels that fish in both the NFMA and SFMA was estimated to be less than a 1–percent reduction in net pay to crew or net return to the vessel. This low level of impact suggests that vessels that fish in both management areas predominantly fished in the NFMA, at least during FY 2002. The average impact on vessels that fish exclusively in the SFMA was about an 18–percent reduction in returns to the vessel owner and a 22–percent reduction in net pay to crew. Average impacts by state exhibit substantial variability from no impact on vessels from NC to a reduction in average vessel net return of 27 percent for vessels in MA and NJ. Furthermore, the per-trip average return on monkfish trips is estimated to be reduced by 25 percent as a result of this action. This means that, on average, a monkfish trip fished in the SFMA would produce 25 percent less income toward fixed costs, debt, and owner profit under the FY 2004 trip limits. Similarly, net pay per crew member would be reduced by an average of 22 percent. The economic impacts of this final rule are necessary to ensure the continued rebuilding of the monkfish stock in the SFMA. Based on the most recent 3–year running average biomass index from the NMFS fall trawl survey, the monkfish stock in the SFMA is no longer overfished. However, the current biomass index is 8.9–percent below the annual biomass index target for 2003 established in Framework 2. Therefore, a reduction in the target TAC for the SFMA is required. In addition, a reduction in monkfish trip limits and implementation of DAS restrictions for vessels fishing in the SFMA are required in order to ensure that the reduced target TAC for this area is not exceeded.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all vessels issued a limited access monkfish permit, and to all Federal dealers issued a monkfish permit. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and are also available at the following web site: *http://www.nmfs.gov/ro/doc/nero.html.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 1, 2004.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.92, paragraph (b)(1) is revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) *Limited access monkfish permit holders.*—(i) *General provisions.* All limited access monkfish permit holders shall be allocated 40 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless modified by paragraph (b)(1)(ii) of this section according to the provisions specified at § 648.96(b)(3). Limited access NE multispecies and limited access sea scallop permit holders who also possess a valid limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

(ii) *FY 2004 DAS restrictions for vessels fishing in the SFMA.* For the 2004 fishing year, limited access monkfish vessels may fish only 28 of their 40 monkfish DAS allocation in the SFMA. If a vessel does not possess a valid letter of authorization from the Regional Administrator to fish in the NFMA as described in § 648.94(f), NMFS will presume that any monkfish DAS used was fished in the SFMA.

* * * * *

■ 3. In § 648.94, paragraphs (b)(2) (i) and (ii) are revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(2) * * *

(i) *Category A and C vessels.* Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (250 kg) tail-weight or 1,826 lb (828 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

(ii) *Category B and D vessels.* Category B and D vessels fishing under the monkfish DAS program in the SFMA may land up to 450 lb (204 kg) tail-weight or 1,494 lb (678 kg) whole weight of monkfish per monkfish DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor for tail-weight to whole weight of 3.32), unless modified pursuant to § 648.96(b)(2)(ii).

* * * * *

[FR Doc. 04–7891 Filed 4–2–04; 2:28 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 67
Wednesday, April 7, 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 RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1650, 1653, 1655 and 1690

Methods of Withdrawing Funds From the Thrift Savings Plan; Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts; Loan Program; Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board

ACTION: Proposed rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to amend the court order regulations to remove attorneys from the list of permissible court order payees, and to require non-English court orders to be accompanied by a certified English translation. The Executive Director proposes to revise the TSP loan regulations to assess a $50.00 fee on new TSP loans, permit a participant to have a single general purpose loan at any one time, and implement a 60-day waiting period between the date a loan is repaid and a new loan application for a loan of the same type will be accepted. Finally, the Executive Director proposes to clarify the TSP regulations pertaining to powers of attorney documents, guardianship orders, and conservatorship orders.

DATES: Comments must be received on or before May 7, 2004.

ADDRESSES: Comments may be sent to Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Board's Fax number is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest on (202) 942–1661.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Court Orders

A state domestic relations court can award a portion of a participant's TSP account "to another person'' in an action for divorce, annulment or legal separation. 5 U.S.C. 8467(a). TSP court order regulations interpret this provision to permit a payment to the spouse, former spouse, child, or dependent of the participant, or to an attorney for the spouse, former spouse, child, or dependent of the participant. 5 CFR 1653.2(a)(4).

Section 401(k) plans are the private-sector equivalents of the TSP and they can be divided by qualified domestic relations orders (QDRO) in domestic relations actions. 26 U.S.C. 414(p); 29 U.S.C. 1056(d). Congress enacted the QDRO provisions in the Retirement Equity Act of 1984 (REA) "to safeguard the security of the employee's immediate family members in the case of divorce or separation.'' *Ablamis* v. *Roper*, 937 F.2d 1450, 1456–7 (9th Cir. 1991). In keeping with this purpose, a QDRO can make an award only to a "spouse, former spouse, child or dependent of a participant,'' not to an attorney. 26 U.S.C. 414(p)(8).

The court order provisions of FERSA serve the same purpose as the QDRO provisions of REA. When the Board first promulgated the court order regulations on March 13, 1995 (60 FR 13604), section 1653.2(b)(4) permitted a court-ordered payment to an attorney for a participant's spouse or dependent because such a payment is tantamount to paying the spouse or dependent. *See* 60 FR 13605. While this is true, the Executive Director has reevaluated this policy and determined that the security of a participant's immediate family is better preserved by conforming the TSP to the private-sector practice of limiting court order payees to the participant's immediate family members, not by making tax-deferred retirement savings available for the payment of legal fees. Proposed section 1653.4(b)(4) would codify this policy change.

The TSP honors retirement benefits court orders from the Commonwealth of Puerto Rico if they meet the requirements of FERSA and TSP regulations. *See* 5 U.S.C. 8401(7) ("court'' for TSP purposes includes a court of the Commonwealth of Puerto Rico). Those court orders are routinely written in Spanish, although the litigants can obtain a certified English translation of the order from the court. When the TSP receives a Puerto Rican court order that is not accompanied by a certified English translation, the TSP must pay for translation services before it can determine whether the court order is enforceable against the TSP.

TSP administrative expenses are borne by all of the participants. The Executive Director has determined that it is appropriate for the parties to the court order, not the TSP participants, to bear the cost of the translation. Therefore, proposed section 1653.3(b) provides that the TSP will reject a court order as incomplete if it is in a language other than English, unless it is also accompanied by a certified English language translation.

TSP Loans

A participant can gain temporary access to a portion of his TSP retirement savings through the TSP loan program. TSP loans are subject to the requirements of FERSA (5 U.S.C. 8433(g)), the Internal Revenue Code (26 U.S.C. 72(p)), and the TSP loan regulations (5 CFR part 1655). These provisions require the TSP to charge interest on loans and to establish a repayment schedule.

The loan program offers an important benefit. It encourages participants to contribute more to the TSP because they know they will have access to some of the money in their accounts to help purchase a home or pay unexpected bills. However, the TSP is not a checking or savings account; it is a long-term investment intended for retirement. Removing money from a TSP account—even when it is paid back—may diminish the amount available to the participant for retirement.

Nevertheless, the number of TSP loans outstanding has been increasing rapidly in recent years. A review of loans issued shows that many participants are paying off a loan and immediately taking another loan. Also, a significant percentage of TSP

participants maintain two loans outstanding. The Executive Director has determined that it is inappropriate for participants to maintain constant loan balances, thus treating the loan program as a source of ready cash, rather than a lender of last resort.

The administrative expenses of the TSP loan program are considerable and they are borne by all of the participants as a general administrative expense. The Executive Director has determined that it is appropriate for the participants who take advantage of the loan program to bear its cost, rather than 2.7 million participants who do not use the program.

The Executive Director proposes three TSP policy changes to reinforce the importance of borrowing from the TSP only as a last resort, to ensure that the administrative expenses of the loan program are reasonable for a retirement savings plan, and to ensure that the costs of the TSP loan program are paid by the participants who use it. First, in section 1655.2, the Board proposes to establish a 60-day waiting period between paying off one loan and receiving another loan of the same type. Second, in sections 1655.4 and 1655.11, the Executive Director proposes to limit participants to having a single general purpose loan outstanding at any one time. Third, in a new section 1655.21, the Executive Director proposes to charge a $50.00 loan fee when a TSP loan is disbursed.

Powers of Attorney, and Guardianship and Conservatorship Orders

A participant can make TSP transactions through an agent by appointing an attorney-in-fact with a power of attorney (POA). In addition, a court order can appoint a guardian or conservator for an incapacitated participant to act as his or her agent for TSP purposes. Current sections 1690.12 and 1690.13 state that the TSP must approve the POA or the court order before the agent can sign a form on the participant's behalf. The Executive Director proposes to amend sections 1690.12 and 1690.13 to state that the TSP will accept a document that was signed by an agent before the date on which the TSP approved the POA or the court order, as long as the agent was authorized under the conditions of his or her appointment to sign the document.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects

5 CFR Parts 1650, 1653 and 1690

Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1655

Employee benefit plans, Government employees, Military Personnel, Pensions, Retirement.

Gary A. Amelio,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, the Board proposes to amend 5 CFR chapter VI as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

1. The authority citation for Part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

Subpart G—Spousal Rights

§ 1650.61 [Amended]

2. Amend § 1650.61 by removing ''§ 1650.64'' from paragraph (b) and ''§ 1650.65'' from paragraph (c)(1), and adding in their places ''this Subpart''.

§ 1650.62 [Amended]

3. Amend § 1650.62 by removing ''§ 1650.64'' from paragraph (b) and ''§ 1650.65'' from paragraph (c), and adding in their places ''this Subpart''.

§ 1650.64 [Amended]

4. Amend § 1650.64 by removing ''§ 1650.64'' from paragraph (a)(1) and adding in its place ''this Subpart''.

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

5. The authority citation for part 1653 is revised to read as follows:

Authority: 5 U.S.C. 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5) and 8474(c)(1).

Subpart A—Retirement Benefits Court Orders

6. Amend § 1653.2 by revising paragraph (a)(4) to read as follows:

§ 1653.2 Qualifying retirement benefits court orders.

(a) * * *

(4) A court order can require a payment only to a spouse, former spouse, child or dependent of a participant.

7. Amend § 1653.3 by revising the last sentence of paragraph (b) introductory text to read as follows:

§ 1653.3 Processing retirement benefits court orders.

* * * * *

(b) * * * To be complete, a court order must be written in English or be accompanied by a certified English translation and contain all pages and attachments; it must also provide (or be accompanied by a document that provides):

* * * * *

PART 1655—LOAN PROGRAM

8. The authority citation for part 1655 is revised to read as follows:

Authority: 5 U.S.C. 8433(g), 8439(a)(3) and 8474.

9. Revise § 1655.2 to read as follows:

§ 1655.2 Eligibility for loans.

A participant can apply for a TSP general purpose or residential loan if:

(a) More than 60 calendar days have elapsed since the participant has repaid in full a TSP loan of the same type.

(b) The participant is in pay status;

(c) The participant is eligible to contribute to the TSP (or would be eligible to contribute but for the suspension of the participant's contributions because he or she obtained a hardship in-service withdrawal);

(d) The participant has at least $1,000 in employee contributions and attributable earnings in his or her account; and

(e) The participant has not had a TSP loan declared a taxable distribution within the last 12 months for any reason other than a separation from Government service; and

10. Amend § 1655.4 by revising the second sentence to read as follows:

§ 1655.4 Number of loans.

* * * One of the two outstanding loans may be a residential loan and the other one may be a general purpose loan. * * *

11–12. Revise paragraph (b) of § 1655.11 to read as follows:

§ 1655.11 Loan acceptance.

* * * * *

(b) The participant has the maximum number of loans outstanding under § 1655.4;

* * * * *

13. Add a new § 1655.21 to read as follows:

§ 1655.21 Loan fee.

A participant will be charged a $50.00 loan fee when a TSP loan is disbursed, which will be deducted from the proceeds of the loan.

PART 1690—THRIFT SAVINGS PLAN

14. The authority citation for Part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

15. Revise § 1690.12 to read as follows:

§ 1690.12 Power of attorney.

A TSP participant or beneficiary can authorize an individual to conduct business with the TSP on his or her behalf by appointing an agent (*i.e.*, an attorney-in-fact). Before the TSP will allow an agent to conduct business for the participant, the TSP must approve the power of attorney (POA) granting such authority. The TSP will accept a general POA that authorizes the agent to act on behalf of the participant with respect to the participant's personal property, Federal Government retirement benefits, or business transactions. A general POA will give the agent unlimited authority with the TSP, including the authority to sign any TSP-related document. The TSP will also accept a specific POA authorizing the agent to effect TSP transactions. If the participant or beneficiary desires to limit the agent's authority to specified TSP transactions, the POA must expressly state the limitation on the agency's authority. To be accepted by the TSP, a POA must be authenticated, attested, acknowledged, or certified by the principal before a notary public or other official authorized by law to administer oaths or affirmations. The TSP will advise the person submitting the POA whether it is valid to effect TSP transactions.

16. Revise § 1690.13 to read as follows:

§ 1690.13 Guardianship and conservatorship orders.

A court can authorize an agent to conduct business with the TSP on behalf of an incapacitated TSP participant or beneficiary by appointing a guardian or conservator. Before the TSP will allow a guardian or conservator to conduct business with the TSP, the TSP must approve the guardianship or conservatorship order issued by a court of competent jurisdiction as defined in § 1690.1. The TSP will accept a general appointment of guardianship or conservatorship that authorizes the agent to act on behalf of the participant with respect to the participant's personal property, Federal Government retirement benefits, or business transactions. A general appointment will give the agent unlimited authority with the TSP, including the authority to sign any TSP-related document. The TSP will also accept a specific appointment of guardianship or conservatorship authorizing the agent to effect TSP transactions. If the court desires to limit the agent's authority to specific TSP transactions, the court order must expressly state the limitation on the agent's authority. In addition, before the TSP will accept a guardianship or conservatorship order, the agent must establish to the satisfaction of the TSP that any bonding requirement or other preconditions specified in the court order have been satisfied. The TSP will advise the guardian or conservator whether the order is valid to effect transactions in the TSP.

[FR Doc. 04–7610 Filed 4–6–04; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

19 CFR Part 24

RIN 1651–AA51

Overtime Compensation and Premium Pay for Customs Officers

AGENCY: Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the definition of "customs officer'' for the purpose of eligibility for overtime compensation and premium pay. In addition, a conforming change is made to the definition of "immigration officer''. These revisions are necessary to reflect recent changes in the functions and organizational structure of U.S. Customs and Border Protection consistent with the Homeland Security Act of 2002.

DATES: Comments must be received by May 7, 2004.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and may be inspected at 799 9th Street, NW., 5th Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Balaban, Financial Analyst, Office of Field Operations, (202) 927–0031.

SUPPLEMENTARY INFORMATION:

Background

Section 24.16 of the Customs Regulations (19 CFR 24.16) sets forth the procedure that U.S. Customs and Border Protection (CBP) must follow to furnish overtime and premium pay to customs officers, as required by the Customs Officer Pay Reform Act ("COPRA''; 19 U.S.C. 267). The statutory language at 19 U.S.C. 267(e)(1) provides that overtime compensation and premium pay may be paid to an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Since the enactment of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*), these regulations are promulgated by the Secretary of Homeland Security.

The enabling regulation, specifically § 24.16(b)(7), Customs Regulations, defines those eligible for COPRA coverage by specifying only four position descriptions: "Customs Inspector,'' "Supervisory Customs Inspector,'' "Canine Enforcement Officer,'' and "Supervisory Canine Enforcement Officer.'' This definition does not encompass the expanded border security and inspection functions brought into CBP by the government reorganization consistent with the Homeland Security Act of 2002. (See Homeland Security Act and the President's Reorganization Plan of November 25, 2002, as amended by the President's January 30, 2003 modification.)

When CBP was established on March 1, 2003, it brought together some 18,000 inspection personnel from different agencies and disciplines at the nation's ports of entry, with the priority mission of preventing terrorists and terrorist weapons from entering the United States. At present, three different overtime and premium pay systems are

required to administer overtime compensation and premium pay for inspection personnel.

Proposed Regulation

This proposed regulation would amend the definition of ''customs officer'' for the purpose of eligibility for overtime compensation and premium pay. As a result of this regulatory change to the definition of ''customs officer'' in 19 CFR and a conforming change to the definition of ''immigration officer'' in 8 CFR, the Department of Homeland Security (DHS) will implement a single overtime and premium pay system, COPRA, replacing the three different systems that are now in place. This will eliminate the inequities and disparities in pay and scheduling under the three different systems.

A new position, Customs and Border Protection Officer (known as CBP Officer), is being established to merge the expanded border and inspection functions formerly performed within three separate agencies: the Immigration and Naturalization Service (Department of Justice), the United States Customs Service (Department of the Treasury), and the Animal and Plant Health Inspection Service (Department of Agriculture). The CBP Officer will be the principal front line officer carrying out the priority mission and the traditional customs, immigration and some agriculture inspection functions, which are now the responsibility of CBP. The establishment of the new position will enable the agency to perform its mission more efficiently and to provide better protection and service to the public at the ports of entry. In addition, CBP is establishing the CBP Agriculture Specialist position with responsibilities for agriculture inspection of passengers and cargo as well as analysis of agriculture imports. In order to assure that these officers meet their responsibilities to the public, they are required to be available for overtime as a condition of employment.

To enable CBP to furnish overtime compensation and premium pay for these new positions, it is necessary to include ''Customs and Border Protection Officer'' and related positions within the definition of ''customs officer'' in 19 CFR 24.16(b)(7). It is noted that the continued usage of the term ''customs officer'' does not reflect any reorganization within DHS. Rather, it occurs because it reflects the pertinent statutory authority, 19 U.S.C. 267, regarding overtime compensation and premium pay. Including the ''Customs and Border Protection Officer'' within the definition of ''customs officer'' in 19 CFR 24.16(b)(7) does not affect the authority of a ''Customs and Border Protection Officer'' to engage in customs, immigration, and agriculture inspection functions. Instead, it is a key step to implementing the ''one face at the border'' initiative by harmonizing the pay systems for the personnel who perform those functions.

Furthermore, it is necessary to include a technical change in 8 CFR 103.1 to authorize a customs officer, as defined in 19 CFR 24.16(b)(7), to perform immigration inspection functions, without a separate designation. Currently, customs officers perform such immigration functions pursuant to a designation as an immigration officer.

Finally, it is important to note that this proposed rule is tangentially related but separate and distinct from the proposed rule published on February 20, 2004 in the **Federal Register** by DHS and the Office of Personnel Management regarding the establishment of a new human capital system for DHS. The two proposals address different human resources issues. This proposed rule expands the eligibility of certain employees to receive overtime compensation and premium pay under 19 U.S.C. 267. This rule has no impact on setting any employee's basic rate of pay. The human capital rule, on the other hand, proposes to create a new system for setting basic pay within DHS.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to CBP, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 A.M. and 4:30 P.M. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Executive Order 12866

This rule is considered by DHS to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review. DHS has assessed the impacts of this rulemaking and its alternatives, as presented below.

Impact on User Fees

At present, three user fees, supplemented by appropriations, fund the three different overtime pay systems that, in turn, govern the three traditional inspection disciplines. CBP will assure that there will be no impact on fees or service levels. CBP will track and account by activity how the fees are spent to ensure the proper transfer of immigration and agriculture funds to reimburse the Customs User Fee Account to cover costs incurred for immigration and agriculture overtime services. CBP plans to use the Cost Management Information System (CMIS) to track expenses by activity. CMIS is an activity-based cost accounting system that has been audited and endorsed by the General Accounting Office. Employees use established activity codes to track their time through the Customs Time and Attendance System. Fee payers that are currently providing the traditional user fee funding for customs, immigration and agriculture inspection services will continue to pay and benefit as they have in the past.

Impact on Employees

As noted, when CBP was established on March 1, 2003, it brought together inspection personnel from three different agencies (Agriculture, Immigration and Naturalization Service, and Customs). Inspectors in each of these workforces earn overtime and premium pay based on three different statutes. In order to establish ''one face at the border,'' CBP is creating a new frontline officer corps to unify and integrate the inspectional work of these three legacy agencies. The unified occupations require a single compensation system. Today, while the officers are still classified in the three legacy occupations, they are paid under three sets of overtime rules, which has resulted in disparate earnings for virtually the same work. In addition, the three separate occupations and overtime rules have created significant administrative inefficiencies, as well as work assignment and payroll problems. The impact of this proposal on the inspectional workforce is that officers who perform the same functions at the ports of entry will be paid overtime and premium pay under the same computational rules.

This proposed rule does not address the number of overtime hours the officers will be required to work, which varies by individual, by port, and by

other factors such as workload fluctuations, staffing levels at a particular location, and changes to the national threat alert level. Instead, this proposed rule adds currently classified immigration and agriculture officers (approximately 8,000 inspectors) to the COPRA system, and thus affects their rates of overtime and premium pay for actual hours worked. (Over 10,000 inspectors, all former Customs Service, are already covered by COPRA.)

The impact of this rule will be that for some work schedules, certain employees will earn more, while for other work schedules, they will earn less. For example, current agriculture inspectors who work overtime on a weekday will earn "double time'' under COPRA instead of "time-and-a-half'' under their current system. On the other hand, these same inspectors may earn less under COPRA than under their current system for work on a Sunday. The chart below provides additional examples of how the three overtime systems differ when comparing hours worked. On the whole, the impact of this proposed rule on the overall earnings for the same or similar number of hours worked is expected to be minimal. While some features of COPRA are less generous than those of other systems, there are compensating features that are more generous. Thus, the differences between COPRA and the other systems balance out in terms of earnings for hours worked. However, it is noted that this proposed rule affects only one aspect of overtime and premium pay earnings of employees. Other factors, such as the total number of hours worked and when the overtime is worked, impact the aggregate earnings of officers on an annual basis. The explanation provided herein, both in text and in the accompanying Table, represent a good faith effort to explain the potential impact of this proposed rule on the employees. However, due to the complexities of the different systems and the differing work schedules of individual inspectors, the exact impact of the proposed rule on a specific employee is speculative and incapable of exact computation. The difficulty of comparing these systems is highlighted in the November 2001 GAO Report titled *Customs and INS—Comparison of Officer's Pay* (GAO–02–21). The GAO Report compared two of these systems and concluded that "straightforward and generalizable comparisons in relation to these pay provisions are infeasible.''

CBP does not anticipate that the proposed amendment will have an impact on private entities, as the proposed changes pertain to the agency's internal operating procedures and, because overtime compensation will be funded with existing user fees the expenditure of which will be subject to normal accounting within the government. However, DHS has determined this action is a "significant'' regulatory action within the meaning of Executive Order 12866 because it may be perceived to relate to the revisions of the Federal employment system DHS is presently considering under the Homeland Security Act. This proposal is separate from those revisions, which do not address overtime compensation.

Similarities and Differences Between COPRA and Other Overtime Systems

There are a number of similarities and differences between COPRA and the overtime systems under which legacy immigration and agriculture inspectors have been covered.

The following chart compares the major provisions of the three systems. The chart contains a high-level overview of the systems and is not intended to contain all the details relevant to determining the rate of pay in specific situations.

TABLE.—GENERAL COMPARISON OF OVERTIME SYSTEMS

Pay provision/term	Customs inspectors	Immigration inspectors	Agriculture inspectors
Basic pay	General Schedule pay with locality pay adjustment based on geographic area.	Same as Customs	Same as Customs.
Basic hourly rate	General Schedule hourly rate with locality pay included.	Same as Customs	Same as Customs.
Basic workweek	7-day	6-day (Monday–Saturday)	6-day (Monday–Saturday).
Basic overtime	Compensation in addition to basic pay for work in excess of the 40-hour regularly scheduled work week or work in excess of 8 hours in a day. Overtime pay is 2 times the basic hourly rate—a 100-percent premium (COPRA).	Compensation in addition to basic pay for work in excess of the 40-hour regularly scheduled workweek. Applies to inspection overtime hours worked between 5 p.m. and 8 a.m., Monday–Saturday and anytime on Sunday or a holiday. Overtime pay is 4 hours pay for each additional 2 hours or fraction thereof (1931 Act).	Compensation in addition to basic pay for work in excess of the 40-hour regularly scheduled work week or work in excess of 8 hours in a day. Overtime pay is 1.5 times the basic hourly rate not to exceed a GS–10.1 pay for overtime Monday through Saturday (Title 5).
Other overtime	Not applicable	Compensation in addition to basic pay for (1) overtime inspection work between 8 a.m. and 5 p.m. Monday–Saturday and (2) non-inspection overtime outside these hours. Overtime is paid at 1.5 times the basic hourly rate (50-percent premium.) Maximum rate is based on salary for GS–10, step 1—(the 1945 Act, FEPA).	Not applicable.
Premium pay	Overall term referring to extra compensation or "premium'' paid for work performed on Sunday, holiday, or at night. (The term does not cover overtime pay.)	In addition to Sunday, holiday, and night pay, INS includes overtime in its definition of premium pay.	Overall term referring to extra compensation or "premium'' paid for work performed on holiday or at night. (The term does not cover overtime pay.)

TABLE.—GENERAL COMPARISON OF OVERTIME SYSTEMS—Continued

Pay provision/term	Customs inspectors	Immigration inspectors	Agriculture inspectors
Sunday pay	Premium paid in addition to basic hourly rate for Sunday work. Sunday pay is 1.5 times the basic hourly rate (50-percent premium). Sunday can be a regularly scheduled workday. Officers are paid for actual hours worked.	Compensation for Sunday work. Sunday pay is 2-days' pay for 8 or fewer hours worked. Sunday is not a regularly scheduled workday. Sunday work is scheduled in addition to the regular workweek and is always staffed with overtime. Immigration inspectors are paid based on minimum periods of time worked.	Compensation for Sunday work. Sunday pay is 2 times the hourly rate for actual hours worked. Sunday is not a regularly scheduled workday. Sunday work is scheduled in addition to the regular workweek and is always staffed with overtime (Public Law 107–171).
Holiday pay	Premium paid in addition to basic hourly rate for work on a holiday. Holiday pay is 2 times the basic hourly rate (100-percent premium).	Premium paid in addition to basic hourly rate for work on a holiday. Two days' pay for 8 or fewer hours worked (Mon.–Sat.), in addition to basic pay.	Premium paid in addition to basic hourly rate for work on a holiday. Holiday pay is 2 times the basic hourly rate (100-percent premium).
Night pay (night differential)	Premium paid in addition to basic hourly rate for night work. Night differential pay rates differ based on the time or shift hours worked. Officers paid 1.15 or 1.2 times the basic hourly rate (15- or 20-percent differential). "Majority of hours'' provision applies depending on actual hours worked.	Premium paid in addition to basic hourly rate for night work. Officers are paid 10-percent premium or "differential'' for hours worked between 6 p.m. and 6 a.m.	Same as Immigration.
Night pay on leave	Customs inspectors are paid night differential for work assigned on night shifts when they are on annual, sick, or other leave.	Immigration inspectors are paid limited night differential (if less than 8 hours per pay period) for work assigned to night shifts when they are on leave. INS does not pay night differential to officers on vacation (extended annual leave).	Same as Immigration.
Commute compensation	Compensation for returning to work (commute) to perform an overtime work assignment. Commute compensation is 3 times the basic hourly rate.	Not authorized	Compensation for returning to work (commute) to perform an overtime work assignment. Commute compensation is based on local rates. It is generally between 1 to 3 times the basic hourly rate.
Callback	Additional overtime paid for reporting early or returning to work for unscheduled inspections. Callback is 2 times the basic hourly rate.	See rollback	Additional overtime paid for returning to work for unscheduled inspections. Callback is 2 times the basic hourly rate for Sundays but capped at GS–10.1 pay for overtime work between Monday and Saturday.
Rollback	See callback	Additional overtime paid for reporting early or returning to work for unscheduled inspections. Rollback is 2-hours' additional pay at basic overtime rate.	See callback.
Foreign language proficiency Award.	Premium paid for proficiency and use of foreign language while performing inspection duties. Foreign language award is between 3 and 5 percent of basic pay.	Not authorized	Not authorized.
Retirement annuity (overtime earnings included).	Customs includes overtime earnings (up to ½ the Statutory Cap) in calculating retirement pay.	Not authorized	Not authorized.
Alternate work schedule	Regularly scheduled work during a pay period based on a 9- or 10-hour workday totaling 80 hours per day period (every 2 weeks).	Same as Customs	Same as Customs.

Increased Efficiency

The adoption of a single overtime system in lieu of three overtime systems now in place provides greater efficiencies in scheduling, monitoring and tracking overtime. Thus, CBP anticipates no net costs from this proposed regulation, either to the public at large or to user fee payers interested in maintaining levels of services and facilitation. In fact, CBP anticipates savings both to the government and to the public as the systems for paying officers for overtime and clearing goods and passengers are made more effective and efficient.

DHS invites comment on the impacts of this proposed rule.

Alternatives Considered

A key objective in establishing DHS was to unify border security functions at the nation's ports of entry. In DHS, the three separate agencies whose employees previously worked side by side at these ports of entry are now united. They are unified not only in the same organization, with the same management chain of command—they are also united around a common priority mission. In addition, these employees, with appropriate cross-training, will merge to perform the traditional missions that came together at the ports of entry from the legacy agencies of U.S. Customs, the Immigration and Naturalization Service, and the Animal and Plant Health Inspection Service. Thus, a well-trained and well-integrated workforce serves as a "force multiplier'' in carrying out both the priority mission and the traditional missions of CBP. However, in order to integrate the workforce, a common overtime and premium pay system is required.

In order to implement the new frontline positions of CBP Officer and CBP Agriculture Specialist, it is necessary and appropriate to have the incumbents of these positions work under the same overtime system. That is, it is not feasible to pay incumbents of the same position under different overtime systems. Notwithstanding the feasibility, it is also not fair to employees to pay them differently when they are working side by side, performing the same type of work. Thus, the alternative of maintaining three overtime systems was considered not viable under the Secretary's "one face at the border'' initiative.

A review of available options for the overtime system was undertaken. COPRA was selected as the best available compensation system for the new positions because of the advantages it offers management, employees, and the traveling public. It is the most modern of the three systems, implemented only 10 years ago; in contrast, the statutes governing the other legacy systems were each enacted over 50 years ago, before the exponential growth of international trade and travel. COPRA more closely aligns pay to actual work performed, enabling the agency to more efficiently manage overtime. It establishes a 7-day workweek under which Sunday is not considered an overtime day, thereby providing greater flexibility in managing work assignments since officers can be regularly scheduled for any day of the week based on operational needs. Further, it is not statutorily permissible to use the overtime systems governing the immigration (1931 Act) and agriculture (Public Law 107–171) inspectors to cover all inspectional activities performed by these new unified officer positions.

CBP considered, but rejected, the option of converting all inspectors to a totally new overtime and premium pay system. In order to do so, CBP would have needed to seek authorizing legislation. As a result, it is not certain whether, or when, appropriate legislation would have been enacted. This would have involved unacceptable delays in the implementation of the "one face at the border'' initiative.

For the employee, COPRA offers better premium pay rates than the other systems for employees who work night shifts (as outlined in the comparison chart above). Another significant advantage over the other systems is that COPRA provides a retirement benefit. Under the statute, up to 50% of the statutory cap (Pub. L. 103–66) on overtime earnings is credited as base pay for retirement purposes, yielding a higher annuity that is more aligned with the officer's annual earnings. COPRA also authorizes payment of a foreign language proficiency award (up to 5% of base pay) to officers who maintain and use their language skills as part of their job duties.

Regulatory Flexibility Act

DHS has determined that as this proposed rule would apply only internally to CBP employees, it will not have a significant economic impact on a substantial number of small entities, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates

These proposed regulations would not result in the expenditure by State, local, or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

E.O. 13132, Federalism

DHS has determined these proposed regulations would not have Federalism implications because they would apply only to Federal agencies and employees. The proposed regulations would not have financial or other effects on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

E.O. 12988, Civil Justice Reform

The proposed regulation is consistent with the requirements of E.O. 12988. Among other things, the regulation would not preempt, repeal or modify any federal statute; provides clear standards; has no retroactive effects; defines key terms; and is drafted clearly.

Paperwork Reduction Act

The proposed regulations do not involve any information collection from any member of the public.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Immigration, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, User fees, Wages.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend chapter I of Title 8 and chapter I of Title 19 of the Code of Federal Regulations as set forth below.

Title 8, Chapter I

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552A; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

* * * * *

2. In § 103.1, paragraph (a) is republished and paragraph (b) is amended by adding a sentence at the end to read as follows:

§ 103.1 Delegations of authority; designation of immigration officers.

(a) *Delegations of authority.* Delegations of authority to perform functions and exercise authorities under the immigration laws may be made by the Secretary of Homeland Security as provided by § 2.1 of this chapter.

(b) *Immigration Officer.* * * * Any customs officer, as defined in 19 CFR 24.16, is hereby authorized to exercise the powers and duties of an immigration officer as specified by the Act and this chapter.

Title 19, Chapter I

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

3. The general authority citation for part 24 is revised and the specific authority citation for § 24.16 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623; 46 U.S.C. 2111, 2112;

* * * * *

4. In § 24.16, paragraph (b)(7) is revised to read as follows:

§ 24.16 Overtime services; overtime compensation and premium pay for Customs Officers; rate of compensation.

* * * * *

(b) * * *

(7) Customs Officer means only those individuals assigned to position descriptions entitled ''Customs Inspector,'' ''Supervisory Customs Inspector,'' ''Canine Enforcement Officer,'' ''Supervisory Canine Enforcement Officer,'' ''Customs and Border Protection Officer,'' ''Supervisory Customs and Border Protection Officer,'' ''Customs and Border Protection Agriculture Specialist,'' or ''Supervisory Customs and Border Protection Agriculture Specialist.''

Dated: April 1, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 04–7857 Filed 4–6–04; 8:45 am]

BILLING CODE 4820–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2004–7]

Inaugural Committee Reporting and Prohibition on Accepting Foreign National Donations

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed rules setting forth reporting requirements for Presidential inaugural committees and prohibiting Presidential inaugural committees from accepting donations from foreign nationals. These regulations would implement requirements of the Bipartisan Campaign Reform Act of 2002. The Commission has made no final decision on the issues presented in the rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before May 7, 2004. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to John C. Vergelli, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to *Inaugural04@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. The Commission will post public comments on its web site. If the Commission decides that a public hearing is necessary, the hearing will be held in its ninth floor meeting room, 999 E. St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John C. Vergelli, Acting Assistant General Counsel, or Esa L. Sferra, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 308 of the Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law 107–155, 116 Stat. 81 (March 27, 2002), amended 36 U.S.C. 510 and the Federal Election Campaign Act of 1971, as amended (''FECA'' or ''the Act''), 2 U.S.C. 431 *et seq.*, by establishing new requirements for inaugural committees. These committees are appointed by the President-elect to be in charge of the Presidential inaugural ceremony and activities connected with the ceremony. Chapter 5 of title 36 of the United States Code provides the inaugural committee with special privileges in the District of Columbia for the five days before and the four days after the inauguration ceremony. Under 36 U.S.C. 511, Congress may make appropriations for the District of Columbia to pay for the swearing-in ceremony, however, all other activities, including parades, galas, and balls, are paid for by the inaugural committee.

Prior to BCRA's enactment, inaugural committees had no disclosure responsibilities and could accept donations from foreign nationals. Under section 308 of BCRA, in order for a committee to be considered the inaugural committee, it must agree to disclose all donations it receives aggregating $200 or more, and it must not accept a donation from any foreign national.

The Commission proposes to add new 11 CFR 104.21 to the reporting rules in 11 CFR part 104 to set forth inaugural committee reporting requirements. These proposed requirements are minimal compared to the Act's reporting requirements for political committees. The Commission's rules on foreign national contributions and expenditures are found at 11 CFR 110.20. A new paragraph would be added to this section to ban the acceptance of foreign national donations by inaugural committees.

I. Proposed 11 CFR 104.21. Reporting by Inaugural Committees

Paragraph (a)(1) of proposed 11 CFR 104.21, *Definitions,* would define ''inaugural committee.'' The definition proposed is identical to that in 36 U.S.C. 501(1) and in the municipal regulations of the District of Columbia (*see* D.C. Mun. Regs., tit. 24, section 899).[1] The

[1] The District Columbia has statutory authority to regulate many aspects of the activities of the

Continued

proposed definition states that an "inaugural committee'' is the committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities connected with the ceremony. This proposed definition would presume that only one committee may be named.

Paragraph (a)(2) of proposed 11 CFR 104.21 would define "donation.'' The proposed definition would be based on that at 11 CFR 300.2(e), stating that a donation means a payment, gift, subscription, loan, advance, deposit, or anything of value given to an inaugural committee. This proposed definition would be similar to the definition of "contribution,'' except that contributions are made for purpose of influencing a Federal election. *See* 11 CFR 100.51 through 100.56 and 114.1(a)(1). Monies and other things of value given to an inaugural committee would be "donations'' because the inaugural committee is not a political committee and things of value given to it are not for the purpose of influencing a Federal election. *See also,* 11 CFR 300.2(e). The Commission seeks comment on this definition of "donation.''

Proposed 11 CFR 104.21(b) would set forth the steps necessary for a committee appointed by the President-elect to be considered the inaugural committee under these regulations. BCRA section 308 expressly provides that a committee must "agree to'' abide by certain requirements to be considered the inaugural committee. 36 U.S.C. 510(a). The Commission interprets this statutory language to require an affirmative action on the part of the inaugural committee. The proposed rule would implement this requirement by requiring the inaugural committee to file a letter with the Commission within 15 days of being appointed. The letter would have to contain the name and address of the inaugural committee, the name of its chairperson or other officer who will serve as the point of contact for the Commission, and a statement indicating that the inaugural committee will comply with the disclosure requirements in proposed 11 CFR 104.21(c) and the ban on accepting foreign national donations in proposed 11 CFR 110.20(j).

The Commission seeks comment on whether such a filing requirement would be necessary. Alternatively, the Commission seeks comment on whether a new FEC form would be preferable to a letter-filing. Finally, the Commission seeks comment on whether the inaugural committee should be free to designate a person other than the chairperson or other officer as the point of contact with the Commission.

Proposed 11 CFR 104.21(c) would set forth the disclosure requirements for inaugural committees. Proposed paragraph (c)(1) would require the chairperson or other officer identified in the letter-filing required by proposed paragraph (b) of this section to be responsible for signing and filing the report. Although BCRA section 308 does not explicitly require a signature on the report, the Commission's reporting regulations provide generally that "[e]ach individual having the responsibility to file a designation, report or statement * * * shall sign the original designation, report or statement,'' unless it is electronically filed. 11 CFR 104.14(a). The Commission seeks comments on this proposed requirement for a signature on the report required by BCRA section 308.

The proposed rules do not address the scope of the Commission's authority to enforce these proposed provisions, or to audit inaugural committees. In this regard, the Commission notes that 36 U.S.C. 508 provides that the "Mayor of the District of Columbia, or other official having jurisdiction in the premises, shall enforce'' the chapter of title 36 in which BCRA section 308 is codified. The Commission seeks comment on whether it has authority to enforce the rules proposed in this rulemaking, including authority to audit inaugural committees, or whether its authority is limited to receiving and publicizing the reports called for by BCRA section 308 (36 U.S.C. 510).

Proposed paragraph (c)(2), *When to file,* would implement the statutory requirement that the inaugural committee must file its report with the Commission no later than 90 days after the date of the inaugural ceremony. In keeping with other reporting deadlines in Commission regulations, the proposed rule would require the reports be received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the 90th day after the date of the inaugural ceremony. *See generally,* 11 CFR 100.19(b).

Proposed paragraph (c)(3), *Where to file,* would state that all letters, statements, and reports filed by inaugural committees must be filed with the Federal Election Commission.

Proposed paragraph (c)(4), *How to file,* would set forth the methods of filing an inaugural committee could use to file the 90-day report. The proposed rules would permit inaugural committees to file on paper or, alternatively, would permit, but not require, the use of the Commission's electronic filing system. 2 U.S.C. 434(a)(11)(i), (ii). The Commission has tentatively concluded that an inaugural committee will not be subject to the mandatory electronic filing requirements. The mandatory electronic filing requirement applies if a person receives or makes, or has reason to expect to receive or make, in excess of $50,000 in *contributions* or *expenditures* in a calendar year. 11 CFR 104.18(a)(1). The funds received and spent by the inaugural committee will presumably be donations and disbursements of non-Federal funds, not contributions and expenditures of Federal funds. Thus, the proposed rules would not make inaugural committees subject to the Commission's *mandatory* electronic filing regulations at 11 CFR 104.18; such filing would be at the election of the inaugural committee. The Commission requests comments on whether inaugural committees should be required to file electronically.

Proposed paragraph (c)(5) would require an inaugural committee to file the 90-day report on new FEC Form 13, which the Commission would create.

Proposed paragraph (c)(6), *Contents of Reports*, would set forth the information inaugural committees would be required to disclose in their reports. The proposed rules at 11 CFR 104.21(c)(6)(i), (ii), and (iii), would track 36 U.S.C. 510(b) by requiring disclosure of the name and address of each person making donations aggregating equal to, or in excess of, $200, the amount of each such donation, and the date that each such donation was received. Inaugural committees would be required to report *all* donations made by a person whose total donations aggregate $200 or more. This is similar to Commission regulations at 11 CFR 104.3(a)(4)(i) requiring political committees to itemize *all* contributions from a person once that person's contributions exceed $200 in the aggregate.

Proposed paragraph (d) would require the inaugural committee to maintain records in accordance with the requirements of 11 CFR 104.14. The Commission requests comments on whether inaugural committees should be required to comply with the Commission's established recordkeeping regulations for political committees. *See* 11 CFR 104.14(b). Alternatively, should the Commission set forth recordkeeping rules specifically for inaugural committees? Should there be any recordkeeping requirements?

Inaugural Committee, such as the inaugural parade route, public safety at inaugural events, and concession sales permits at inaugural events. *See e.g.*, 36 U.S.C. 502.

II. Proposed 11 CFR 110.20(j). Donations by Foreign Nationals to Inaugural Committees

Current 11 CFR 110.20 prohibits contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals in connection with any election. Section 110.20 implements 2 U.S.C. 441e, which was amended by BCRA. *See generally* Final Rule and Explanation and Justification, ''Contribution Limits and Prohibitions,'' 67 FR 69928, 69940 (November 19, 2002).

In addition to these prohibitions codified at 2 U.S.C. 441e, BCRA also prohibits an inaugural committee from accepting a donation from a foreign national. 36 U.S.C. 510(c). Proposed new paragraph (j) of 11 CFR 110.20 would implement BCRA section 308 by prohibiting foreign nationals from directly or indirectly donating to an inaugural committee. Proposed paragraph (j) would also prohibit any person from knowingly soliciting, accepting or receiving donations to an inaugural committee from a foreign national. In both of these respects, proposed paragraph (j) generally follows the structure of the current provisions of section 110.20.

BCRA section 308 does not explicitly forbid donations by a foreign national to an inaugural committee. On its face, section 308 merely forbids acceptance of such a donation by an inaugural committee. The Commission seeks comment on whether the proposed rule's explicit prohibition on donations by a foreign national would be a permissible interpretation of BCRA section 308; *e.g.*, as a necessary implication of the ban on acceptance.

Although BCRA section 308 does not expressly establish a knowledge standard with regard to its prohibition on acceptance of foreign national donations, proposed paragraph (j) would prohibit only the *knowing* solicitation, acceptance, or receipt of a donation from a foreign national. In proposed paragraph (j), ''knowingly'' would have the same meaning as is set out in current paragraph (a)(4) of section 110.20. The Commission has read a ''knowingly'' standard into its rules banning the acceptance of foreign national contributions and donations by other persons. *See* 11 CFR 100.20(g) and the Final Rule and Explanation and Justification, ''Contribution Limits and Prohibitions,'' 67 FR 69928, 69940 (November 19, 2002).

''Donation,'' as used in proposed paragraph (j) would have the same meaning as in 11 CFR 110.20(a)(2), which uses the definition of ''donation'' at 11 CFR 300.2(e). ''Foreign national'' would have the same meaning as in 2 U.S.C. 441e(b) and 11 CFR 110.20(a)(3). Proposed paragraph (j) would include a reference to proposed 11 CFR 104.21(a)(1) for the definition of ''inaugural committee.''

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that this proposed rule affects only Presidentially appointed inaugural committees, of which there will be only one every four years. The inaugural committee does not appear to be a small entity within the meaning of 5 U.S.C. 601(3)–(6). Even if the inaugural committee is deemed a small entity, the new reporting requirements would require the filing of only one letter and one report. There would be no ongoing reporting requirement. Therefore, any increase in the cost of compliance would not impose a significant economic burden on a substantial number of these entities.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set forth in the preamble, the Federal Election Commission proposes to amend subchapter A of chapter I of title 11 of the Code of Federal Regulations as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES, PERSONS MAKING ELECTIONEERING COMMUNICATIONS AND INAUGURAL COMMITTEES (2 U.S.C. 434, 36 U.S.C. 510)

1. The title of part 104 would be revised to read as set forth above.

2. The authority citation for part 104 would be revised to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a, and 36 U.S.C. 510.

3. New § 104.21 would be added to read as follows:

§ 104.21 Reporting by inaugural committees.

(a) *Definitions.* (1) *Inaugural committee.* Inaugural committee means the committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities connected with the inaugural ceremony.

(2) *Donation.* For purposes of this section, donation means a payment, gift, subscription, loan, advance, deposit, or anything of value given to an inaugural committee.

(b) *Filing by inaugural committees.* In order to be considered the inaugural committee under 35 U.S.C. chapter 5, within 15 days of appointment by the President-elect, the appointed committee must file a letter with the Commission containing the following:

(1) The name and address of the inaugural committee;

(2) The name of the chairperson, or the name and title of another officer who will serve as the point of contact; and

(3) A statement agreeing to comply with paragraph (c) of this section and 11 CFR 110.20(j).

(c) *Reporting requirements of inaugural committees.* (1) *Who must report.* The chairperson or other officer identified in the filing required by paragraph (b) of this section shall sign and file a report in accordance with this paragraph (c) of this section.

(2) *When to file.* The inaugural committee must file a report with the Commission not later than the 90th day following the date on which the Presidential inaugural ceremony is held. This report must be timely filed in accordance with 11 CFR 100.19.

(3) *Where to file.* All letters, statements, and reports required under this section, as well as any amendment(s) thereto, shall be filed with the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(4) *How to file.* An inaugural committee must file its letters, statements, and reports in original form, however, an inaugural committee may choose to file its reports in an electronic format that meets the requirements of 11 CFR 104.18.

(5) *Form.* An inaugural committee must file the report required by this paragraph on FEC Form 13.

(6) *Contents of reports.* Each report filed with the Commission under this section must contain:

(i) The name and address of the person making each donation of money or of anything of value aggregating $200 or more;

(ii) The amount of each such donation; and

(iii) The date each such donation is received by the inaugural committee.

(d) *Recordkeeping.* All inaugural committees that file statements and reports under this section must maintain records in accordance with 11 CFR 104.14.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

4. The authority citation for part 110 would be revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k, and 36 U.S.C. 510.

5. The title to § 110.20 would be revised and paragraph (j) would be added to read as follows:

§ 110.20 Prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals (2 U.S.C. 441e, 36 U.S.C. 510).

* * * * *

(j) Donations by foreign nationals to inaugural committees. A foreign national shall not, directly or indirectly, make a donation to an inaugural committee, as defined in 11 CFR 104.21(a)(1). No person shall knowingly solicit, accept or receive from a foreign national any donation to an inaugural committee.

Dated: April 1, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–7855 Filed 4–6–04; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A319 and A320–200 series airplanes, that currently requires repetitive inspections to detect loose, missing, or discrepant rivets in specified areas of the door frames of the overwing emergency exits, and corrective action if necessary. That AD also requires measurement of the grip length of all rivets in the specified areas, and corrective action if necessary, which terminates the repetitive inspections. This new action would add an inspection for correct dimensions of the interior countersinks of the rivet holes, and related corrective action. The actions specified by the proposed AD are intended to prevent loose, missing, or discrepant rivets, which could lead to reduced structural integrity of the door frames of the overwing emergency exits. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 7, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–135–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–135–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 21, 2002, the FAA issued AD 2002–04–10, amendment 39–12667 (67 FR 9392, March 1, 2002), applicable to certain Airbus Model A319 and A320–200 series airplanes, to require repetitive inspections to detect loose or missing rivets in specified areas of the door frames of the overwing emergency exits, and corrective action if necessary. That AD also requires measurement of the grip length of all rivets in the specified areas, and corrective action if necessary, which terminates the repetitive inspections. That action was prompted by mandatory continuing airworthiness information from a foreign airworthiness authority. The requirements of that AD are intended to detect and correct loose, missing, or discrepant rivets, which could lead to reduced structural integrity of the overwing emergency exit door frames.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2002–04–10, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has informed us of the cancellation of French airworthiness directive 2001–241(B), dated June 27, 2001, which was referenced in AD 2002–04–10. The DGAC mandated an inspection program to detect loose, missing, or discrepant rivets and verify the grip length of affected rivets. During accomplishment of the inspection required by AD 2002–04–10, one operator reported that some of the interior countersinks did not meet design requirements, which could affect the structural integrity of the airplane. Therefore, the DGAC has issued French airworthiness directive 2003–147(B) R1, dated May 14, 2003, to require a supplemental inspection program to measure affected interior countersinks of the rivet holes.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1147, Revision 02, including Appendix 01, dated December 3, 2002. Revision 02 is similar to the original issue of the service bulletin (which was referenced in the existing AD for accomplishment of the specified actions), but adds work for airplanes which have been inspected per the original issue. Revision 02 describes additional procedures for a detailed visual inspection for correct dimensions of the interior countersinks of the rivet holes, and related corrective action. The related corrective action includes rework of any interior countersink with an incorrect dimension to the correct dimension, and installation of a new rivet with the correct grip length.

Airbus also has issued Service Bulletin A320–53–1147, Revision 03, including Appendix 01, dated August 5, 2003. Revision 03 merely notes minor changes to French airworthiness directive 2003–147(B), dated April 26, 2003, by issuance of French airworthiness directive 2003–147(B) R1, dated May 14, 2003 (which is referenced in the proposed AD, as specified below).

The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2003–147(B) R1, dated May 14, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2002–04–10 to continue to require repetitive inspections to detect loose, missing, or discrepant rivets in specified areas of the door frames of the overwing emergency exits and corrective action if necessary. This proposed AD also continues to require measurement of the grip length of all rivets in the specified areas, and corrective action if necessary, which terminates the repetitive inspections. In addition, the proposed AD adds an inspection for correct dimensions of the interior countersinks, and related corrective action. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Explanation of Change Made to Existing Requirements

We have changed all references to a "detailed visual inspection'' in the existing AD to "detailed inspection'' in this proposed AD. We also have revised Note 1 to define the detailed inspection.

Explanation of Compliance Time

Although we normally require that any corrective action be done before further flight, we have determined that the potential for reduced structural integrity of the door frame is very low if the dimension of an interior countersink is incorrect. Thus, we have determined that the corrective action may be deferred until 1,000 flight cycles after accomplishment of the inspection required by paragraph (e) of this AD, as recommended in the service bulletin. Such deferral will not adversely affect safety.

Work Hour Rate Increase

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

Cost Impact

There are approximately 168 airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are currently required by AD 2002–04–10 take about 1 work hour per airplane to do, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required inspections is estimated to be $65 per airplane, per inspection cycle.

The new inspection that is proposed in this AD action would take about 1 work hour per airplane to do, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new inspection proposed by this AD on U.S. operators is estimated to be $10,920, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed 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 proposed herein would not have a substantial direct

effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12667 (67 FR 9392, March 1, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2003–NM–135–AD. Supersedes AD 2002–04–10, Amendment 39–12667.

Applicability: Model A319 series airplanes and A320–200 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–53–1147, dated September 22, 2000; Revision 02, dated December 3, 2002; or Revision 03, dated August 5, 2003.

Compliance: Required as indicated, unless accomplished previously.

To prevent loose, missing, or discrepant rivets in specified areas of the door frames of the overwing emergency exits, which could lead to reduced structural integrity of the door frames, accomplish the following:

Restatement of Requirements of AD 2002–04–10

Repetitive Inspections

(a) Within 3,500 flight cycles after April 5, 2002 (the effective date of AD 2002–04–10, amendment 39–12667): Conduct a detailed inspection of the specified areas of the door frames of the overwing emergency exits for loose, missing, or discrepant rivets, in accordance with Part B and Figure 5 of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1147, dated September 22, 2000; Revision 02, dated December 3, 2002; or Revision 03, dated August 5, 2003. If no loose, missing, or discrepant rivets are found, repeat the inspection at intervals not to exceed 3,500 flight cycles until the requirements of paragraph (d) have been accomplished. As of the effective date of this AD, only Revision 02 or Revision 03 of the service bulletin may be used.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Action

(b) If the inspection required by paragraph (a) of this AD reveals that there are loose, missing, or discrepant rivets: Prior to further flight, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD, in accordance with Part C and Figure 5 of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1147, dated September 22, 2000; Revision 02, dated December 3, 2002; or Revision 03, dated August 5, 2003. As of the effective date of this AD, only Revision 02 or Revision 03 of the service bulletin may be used.

(1) Measure the grip length of all rivets in the specified areas in which the loose, missing, or discrepant rivets were detected and perform corrective action (*e.g.*, inspecting rivet holes for cracks, opening up rivet holes, repairing cracks at rivet holes, and installing new rivets) as applicable, per the service bulletin; except as specified in paragraph (c) of this AD. Repeat the detailed visual inspection required by paragraph (a) of this AD at intervals not to exceed 3,500 flight cycles until the requirements of paragraph (d) of this AD have been accomplished.

(2) Measure the grip length of all rivets in all specified areas and perform corrective action (*e.g.*, inspecting rivet holes for cracks, opening up rivet holes, repairing cracks at rivet holes, and installing new rivets) as applicable, per the service bulletin; except as specified in paragraph (c) of this AD.

(c) If Airbus Service Bulletin A320–53–1147, dated September 22, 2000; Revision 02, dated December 3, 2002; or Revision 03, dated August 5, 2003; recommends contacting the manufacturer for instructions concerning certain repairs, perform those repairs in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or by the Direction Générale de l'Aviation Civile or its delegated agent.

Terminating Action

(d) Prior to the accumulation of 24,000 total flight cycles or within 3,500 flight cycles after April 5, 2002, whichever occurs later: Accomplish the requirements of paragraph (b)(2) of this AD, which constitutes terminating action for the requirements specified in paragraphs (a) and (b) of this AD.

New Requirements of This AD

Inspection of Interior Countersinks/ Corrective Action

(e) Prior to the accumulation of 24,000 total flight cycles or within 3,500 flight cycles after the effective date of this AD, whichever occurs later: Do a detailed inspection for correct dimensions of the interior countersinks of the rivet holes of the door frames of the overwing emergency exits; and any related corrective action; per the Accomplishment Instructions of Airbus Service Bulletin A320–53–1147, Revision 02, including Appendix 01, dated December 3, 2002; or Revision 03, including Appendix 01, dated August 5, 2003. Do any related corrective action within 1,000 flight cycles after doing the inspection.

Alternative Methods of Compliance

(f)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 2002–04–10, amendment 39–12667, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2003–147(B) R1, dated May 14, 2003.

Issued in Renton, Washington, on March 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7890 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–185–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102 airplanes. This proposal would require modification of the electrical power circuit. This action is necessary to prevent component failure in the radar indicator, resulting in an overcurrent condition and consequent overheating or burning of an internal component or the ribbon cable. This could lead to smoke in the cockpit, resulting in incapacitation of the flight crew and loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 7, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–185–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the New York Aircraft Certification Office (ACO), 1600 Stewart Ave., Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Doug Wagner, Electrical Systems Engineer, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Ave., Westbury, New York 11590; telephone (516) 228–7306; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–185–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–185–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition exists on certain Bombardier Model DHC–8–102 airplanes. TCCA advises that it has received reports of smoke in the cockpit. The cause has been attributed to insufficient circuit protection being provided by the existing circuit breaker in the avionics circuit breaker panel leading to component failure in the radar indicator, resulting in an overcurrent condition and consequent overheating or burning of an internal component or the ribbon cable. This condition, if not corrected, could lead to smoke in the cockpit, resulting in incapacitation of the flight crew and loss of control of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Modification Summary Package (ModSum) IS8Q3450000, Revision A, released October 16, 2002, which describes procedures for modification of the electrical power circuit. The modification includes replacing the 7.5 ampere (amp) circuit breaker on the avionics circuit breaker panel with a new 5.0 amp circuit breaker; installing an additional 3.0 amp circuit breaker for the radar indicator; re-terminating existing connecting wires; taping and stowing existing wires; adding new wires (routing new wires with existing wires); and performing an operational test of the weather radar system; as applicable. Accomplishment of the actions specified in the ModSum is intended to adequately address the identified unsafe condition. TCCA classified this ModSum as mandatory and issued Canadian airworthiness directive CF–2003–13, effective June 20, 2003, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the ModSum described previously.

Cost Impact

The FAA estimates that 48 Model DHC–8–102 airplanes of U.S. registry would be affected by this proposed AD. The average labor rate is $65 per work hour and the estimated time to accomplish this proposed AD is between 3 work hours and 9 work hours

per airplane. Required parts would cost $150 per airplane. Total estimated cost would be between $16,560 and $35,280, or between $345 and $735 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed 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 proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2003–NM–185–AD.

Applicability: Model DHC–8–102 airplanes, serial numbers 023 through 392 inclusive; certificated in any category; equipped with an RDS86 Weather Radar System, excluding those airplanes equipped with option CR834CH00284.

Compliance: Required as indicated, unless accomplished previously.

To prevent component failure in the radar indicator, resulting in an overcurrent condition and consequent overheating or burning of an internal component or the ribbon cable, which could lead to smoke in the cockpit, resulting in incapacitation of the crew and loss of control of the airplane; accomplish the following:

Modification

(a) Within 12 months from the effective date of this AD, modify the electrical power circuit by accomplishing all the actions in the Accomplishment Instructions of Bombardier Modification Summary Package (ModSum) IS8Q3450000, Revision A, released October 16, 2002; as applicable. Do the actions per the ModSum.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–13, effective June 20, 2003.

Issued in Renton, Washington, on March 30, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7889 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17093; Airspace Docket No. 04–AGL–02]

Proposed Modification of Class E Airspace; Georgetown, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Georgetown, OH. A Standard Instrument Approach Procedure (SIAP) has been developed for Brown County Airport, Georgetown, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the area of the existing controlled airspace for Brown County Airport.

DATES: Comments must be received on or before May 31, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17093/Airspace Docket No. 04–AGL–02, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17093/Airspace Docket No. 04–AGL–02.'' The postcard will be date/time

stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Georgetown, OH, for Brown County Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) Is not a "significant regulatory action'' under Executive Order 12866; (2) is not a "significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

AGL OH E5 Georgetown, OH [Revised]

Brown County Airport, OH

(Lat. 38°52′55″N., long. 83°52′58″W.)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of Brown County Airport, excluding that airspace within the West Union, OH Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on March 17, 2004.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 04–7879 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14849; Airspace Docket No. 03–AWP–7]

Proposed Establishment of Class E Airspace; Beckwourth, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Beckwourth, CA. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedure (IAP) RNAV (GPS) Runway (RWY) 25, and two RNAV Departure Procedures (DPs) at Beckwourth-Nervino Airport, have made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the new procedures. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before May 24, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14849/ Airspace Docket No. 03–AWP–7, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transporation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, at

15000 Aviation Boulevard, Lawndale, California 90261.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14849/Airspace Docket No. 03–AWP–7.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Beckwourth, CA. The establishment of an RNAV (GPS) RWY 25 IAP, and RNAV DPs at Beckwourth-Nervino Airport have made this proposal necessary. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 25 IAP, and RNAV DPs at Beckwourth-Nervino Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new instrument procedures. Class E airspace designations are published in paragraph 6005 of FAA order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.Therefore, this proposed regulation—(1) Is not a ''significant regulatory action'' under Executive order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

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

* * * * *

AWP CA E5 Beckwourth, CA [NEW]

Beckwourth-Nervino Airport
(Lat. 39°49′06″ N, long. 120°21′10″ W)
Reno/Tahoe International Airport, NV
(Lat. 39°29′57″ N, long. 119°46′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Beckwourth–Nervino Airport and within 4 miles north and 2 miles south of the 100° bearing from the Beckwourth-Nervino Airport extending from 6.5-miles to 12-miles southeast of the Beckwourth-Nervino Airport and within 2 miles each side of the 235° bearing from the Beckwourth-Nervino Airport extending from 6.5-miles to 10 miles west of the Beckwourth-Nervino Airport, and that airspace bounded by line beginning at lat. 40°00′00″ N, long. 120°06′00″ W; to lat. 40°00′00″ N, long. 119°54′00″ W; to lat. 39°52′00″ N, long. 119°45′00″ W; thence counterclockwise via the 21.7-mile radius of the Reno/Tahoe International Airport to lat. 39°48′00″ N, long. 120°00′00″ W; to lat. 39°40′00″ N, long. 120°00′00″ N to lat. 39°40′00″ N, long. 120°06′00″ W to the point of beginning.

* * * * *

Issued in Los Angeles, California, on March 23, 2004.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 04–7880 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AG01

Federal Old-Age, Survivors and Disability Insurance; Coverage of Residents in the Commonwealth of the Northern Mariana Islands (CNMI); Coverage of Ministers, Members of the Clergy and Christian Science Practitioners

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to revise several sections of our regulations to reflect that, for purposes of the title II benefit program (title II of the Social Security Act), we consider the Commonwealth of the Northern Mariana Islands (CNMI) to be a part of the United States. The proposed revisions would take into account the status of the CNMI under current law and explain the coverage rules for work performed in the CNMI. The proposed revisions also explain that

the alien nonpayment provisions, which generally place limits on the payment of title II benefits to aliens (*i.e.* non-United States citizens or nationals) who are outside the United States, do not apply to aliens in the CNMI. We also propose to revise our title II rules on coverage for ministers, members of religious orders, or Christian Science practitioners, to reflect a provision in the Ticket to Work and Work Incentives Improvement Act of 1999 that allows a duly ordained, commissioned or licensed minister, a member of a religious order, or a Christian Science practitioner who previously opted not to be covered under Social Security, a two-year window in which to make an irrevocable election to be covered.

DATES: To consider your comments, we must receive them no later than June 7, 2004.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal at *http://www.regulations.gov;* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Disability and Income Security Programs, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site. You also may inspect the comments on regular business days by making arrangements with the contact person shown in the preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY (410) 966–5609, for information about this notice. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

A. CNMI Changes

Under Pub. L. Number 94–241 enacted on March 24, 1976, and codified at 48 U.S.C. 1801, section 502(a) of the *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America* (the Covenant) provides that certain laws of the United States will apply to the CNMI. The laws include, under section 501(a)(1) of the Covenant, section 228 of title II of the Social Security Act (the Act), and title XVI of the Act. The laws also include ''those laws'' not specifically described in section 501(a)(1) ''which are applicable to Guam and which are of general application to the several States.'' Under section 502(a)(2) of the Covenant, such laws apply to the CNMI ''as they are applicable to the several States.'' Similarly, section 606 of the Covenant applies the tax and benefit provisions of the United States Social Security System to the CNMI, as they apply to Guam. Guam is considered part of the United States for purposes of title II of the Social Security Act. *See* 42 U.S.C. 410(i).

While we previously revised our regulations to reflect that the CNMI is considered to be a part of the United States for purposes of the transitional insured provision for special age-72 benefits in section 228 of the Act (*see* 20 CFR 404.381) and for purposes of the SSI program (*see* 20 CFR 416.215), we have never previously revised our regulations dealing with entitlement to retirement, survivors, and disability insurance benefits under title II to reflect the treatment of the CNMI under the Covenant. We, therefore, propose to revise the following sections of our regulations to reflect the extension of the title II program to the CNMI.

Section 404.2

We propose to revise paragraphs (c)(5) and (c)(6) of section 404.2 of our regulations to include the CNMI in our definition of both ''State'' and the ''United States,'' for purposes of administering title II of the Social Security Act. This would reflect the full application of title II of the Social Security Act to the CNMI beginning January 1, 1987. *See* Presidential Proclamation No. 5564 (51 FR 40399 (Nov. 3, 1986)); *see* also Presidential Proclamation No. 4534 (42 FR 56593 (Oct. 24, 1977)).

Section 404.460(a)(1)

Section 404.460(a)(1) of our regulations describes the scope of the alien nonpayment provision of the Act, which limits the payment of Social Security benefits to aliens outside the United States. We propose to revise the definition of ''outside the United States'' in this section to reflect that we consider the CNMI to be a part of the United States for purposes of this section. This change is necessary to reflect that we will not apply the alien nonpayment provision to aliens residing in the CNMI, just as it is not applied to aliens residing in Guam.

Section 404.1004

Section 404.1004 of our regulations describes what work is covered as employment and defines ''State'' and ''United States'' under title II of the Social Security Act (the Act). Since, under the Covenant, we treat work in the CNMI the same as we treat work in Guam, we propose to revise paragraphs (b)(4), (b)(8) and (b)(9) of this section to include the CNMI in the definition of ''State'' and ''United States'' for title II purposes of the Act.

Section 404.1020

Section 404.1020 of our regulations describes the coverage of work for States and their political subdivisions and instrumentalities. Since, under the Covenant, we treat work in the CNMI the same as we treat work in Guam, we propose to revise § 404.1020(a)(3) of our regulations to include a reference to the CNMI directly after the reference to Guam.

Section 404.1022

Section 404.1022 of our regulations describes the coverage of employment for workers in American Samoa or Guam. Since, under the Covenant, we treat work in the CNMI the same as we treat work in Guam, we propose to revise paragraphs (a) and (c) of this section to reflect that work performed for a private employer in the CNMI is covered employment and that work performed for the government of the CNMI is generally excluded from covered employment.

Section 404.1093

Section 404.1093 of our regulations provides that in using the exclusions from gross income provided under section 931 of the Internal Revenue Code (the Code), 26 U.S.C. 931, (relating to income from sources within possessions of the United States) and section 932 of the Code, 26 U.S.C. 932, (relating to citizens of possessions of the United States) for purposes of figuring your net earnings from self-employment, the term ''possession of the United States'' does not include the Virgin Islands, Guam or American

Samoa. Section 931(c) of the Code, 26 U.S.C. 931(c), defines the term ''specified possession'' as Guam, American Samoa and the CNMI. Therefore, we propose to revise § 404.1093 to include the CNMI.

Section 404.1096

Section 404.1096(d) of our regulations provides that a nonresident alien has self-employment income only if coverage is provided under a totalization agreement, but explains that residents of the Commonwealth of Puerto Rico, the Virgin Islands, Guam or American Samoa, are not considered to be nonresident aliens. Therefore, we propose to revise this section to reflect that residents of the CNMI are not considered to be nonresident aliens.

Section 404.1200

Section 404.1200 describes coverage for State and local government employees under section 218 of the Act. Mandatory Social Security and Medicare coverage is extended to certain services performed after July 1, 1991, by individuals who are employees of a State (other than the District of Columbia, Guam, or American Samoa). Since the CNMI is treated like Guam under the terms of the Covenant, we propose to revise paragraph (b) of this section to add the Commonwealth of the Northern Mariana Islands after Guam.

Section 404.1202

Under title II of the Act, section 210(h) defines the term ''State'' to include ''the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.'' Section 218(b)(1) of the Act refines the preceding definition solely for purposes of section 218, which concerns voluntary agreements for coverage of State and local employees, by eliminating the District of Columbia, Guam, and American Samoa. The definition of the term ''State'' in § 404.1202(b) is based on the definition in section 218 of the Act. Since the CNMI is treated like Guam under the terms of the Covenant, we propose to revise § 404.1202(b) to reflect that the CNMI is not considered a State under section 218. Under the requirements of the Covenant, it would be treated as a State for various other purposes under title II, much like the entities listed in section 210(h) of the Act.

B. Coverage of Ministers, Members of Religious Orders, and Christian Science Practitioners

Section 1402(e) of the Code, 26 U.S.C. 1402(e), allows a duly ordained, commissioned, or licensed minister, a member of a religious order, or a Christian Science practitioner, to file under the terms of that section for an exemption from payment of SECA (Self-Employment Contributions Act) taxes. Section 1402(e) also provides that an exemption received pursuant to section 1402(e) is irrevocable. However, section 403 of the Ticket To Work and Work Incentives Improvement Act of 1999 (Pub. L. 106–170) amended the Code to permit individuals who previously opted for the exemption under section 1402(e)(1) a window of time in which to revoke the exemption. Once the exemption is revoked, the individual may not file any further applications for exemption under section 1402(e)(1). This provision is effective for services performed in taxable years beginning January 1, 2000. Depending on the date of the individual's election, the provisions of this law apply to services performed in either the individual's first or second taxable year beginning after December 31, 1999, and for all succeeding taxable years. The application for revocation of the exemption from coverage must be filed with the Internal Revenue Service (usually as part of the tax return) no later than the due date of the Federal Income Tax Return (including extensions) for the applicant's second taxable year beginning after December 31, 1999.

Congress has permitted revocations of the exemption twice in the past. The Social Security Amendments in 1977 and the Tax Reform Act of 1986 each contained a provision for revocation within certain time periods. Section 404.1071(a) (Ministers and Members of a Religious Order) reflects the revocation period allowed in 1986. We propose to revise section 404.1071(a) to reflect the revocation period allowed in 1977 and the most recent period of revocation offered by section 403 of the Ticket To Work and Work Incentives Improvement Act of 1999.

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

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

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities, as they would affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules impose no new reporting or record keeping requirements subject to clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: March 17, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set forth in the preamble, we propose to amend subparts A, E, K and M of part 404 of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart A—[Amended]

1. The authority citation for subpart A of part 404 is revised to read as follows:

Authority: Secs. 203, 205(a), 216(j), and 702(a)(5) of the Social Security Act (42 U.S.C.

403, 405(a), 416(j), and 902(a)(5)) and 48 U.S.C. 1801.

2. Section 404.2 is amended by revising paragraphs (c)(5) and (6) to read as follows:

§ 404.2 General definitions and use of terms.

* * * * *

(c) *Miscellaneous.*

* * * * *

(5) *State,* unless otherwise indicated, includes:

(i) The District of Columbia,

(ii) The Virgin Islands,

(iii) The Commonwealth of Puerto Rico effective January 1, 1951,

(iv) Guam and American Samoa, effective September 13, 1960, generally, and for purposes of sections 210(a) and 211 of the Act effective after 1960 with respect to service performed after 1960, and effective for taxable years beginning after 1960 with respect to crediting net earnings from self-employment and self-employment income,

(v) The Territories of Alaska and Hawaii prior to January 3, 1959, and August 21, 1959, respectively, when those territories acquired statehood, and

(vi) The Commonwealth of the Northern Mariana Islands effective January 1, 1987; Social Security coverage for affected employees of the government of the CNMI is also effective on January 1, 1987, under section 210(a)(7)(E) of the Social Security Act.

(6) *United States,* when used in a geographical sense, includes, unless otherwise indicated:

(i) The States,

(ii) The Territories of Alaska and Hawaii prior to January 3, 1959, and August 21, 1959, respectively, when they acquired statehood,

(iii) The District of Columbia,

(iv) The Virgin Islands,

(v) The Commonwealth of Puerto Rico effective January 1, 1951,

(vi) Guam and American Samoa, effective September 13, 1960, generally, and for purposes of sections 210(a) and 211 of the Act, effective after 1960 with respect to service performed after 1960, and effective for taxable years beginning after 1960 with respect to crediting net earnings from self-employment and self-employment income, and

(vii) The Commonwealth of the Northern Mariana Islands effective March 24, 1976; U.S. laws applicable to Guam and which are of general application to the States became applicable to the CNMI as they are applicable to the States effective January 1, 1987.

* * * * *

Subpart E—[Amended]

3. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(1), 222(b), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(1), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a).

4. Section 404.460 is amended by revising paragraph (a)(1) to read as follows:

§ 404.460 Nonpayment of monthly benefits of aliens outside the United States.

(a) * * *

(1) For nonpayment of benefits under this section, it is necessary that the beneficiary be an alien, and while an alien, be outside the United States for more than six full consecutive calendar months. In determining whether, at the time of a beneficiary's initial entitlement to benefits, he or she has been outside the United States for a period exceeding six full consecutive calendar months, not more than the six calendar months immediately preceding the month of initial entitlement may be considered. For the purposes of this section, *outside the United States* means outside the territorial boundaries of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

* * * * *

Subpart K—[Amended]

5. The authority citation for subpart K of part 404 continues to read as follows:

Authority: Secs. 202(v), 205(a), 209, 210, 211, 229(a), 230, 231, and 702(a)(5) of the Social Security Act (42 U.S.C. 402(v), 405(a), 409, 410, 411, 429(a), 430, 431 and 902(a)(5)).

6. Section 404.1004 is amended by revising the section heading and paragraphs (b)(4), (b)(8) and (b)(9) to read as follows:

§ 404.1004 What work is covered as employment?

* * * * *

(b) * * *

(4) *Citizen of the United States* includes a citizen of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands.

* * * * *

(8) *State* refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) *United States* when used in a geographical sense means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 404.1020 [Amended]

7. In section 404.1020, paragraph (a)(3) is amended by adding "the Commonwealth of the Northern Mariana Islands'' after "Guam.''

8. Section 404.1022 is amended by revising the section heading, and paragraphs (a) and (c) to read as follows:

§ 404.1022 American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands

(a) *Work in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands.* Work in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands for a private employer is covered as employment the same as in the 50 States. Work done by a resident of the Republic of the Philippines working in Guam on a temporary basis as a nonimmigrant alien admitted to Guam under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act is excluded from coverage regardless of the employer.

* * * * *

(c) *Work for Guam, the Commonwealth of the Northern Mariana Islands, or a political subdivision or wholly owned instrumentality of Guam or the Commonwealth of the Northern Mariana Islands.* Work as an officer or employee (including a member of the legislature) of the government of Guam, or the Commonwealth of the Northern Mariana Islands, their political subdivisions, or any wholly owned instrumentality of any one or more of these, is excluded from coverage as employment. However, the exclusion does not apply to employees classified as temporary or intermittent unless the work is—

(1) Covered by a retirement system established by a law of Guam or the Commonwealth of the Northern Mariana Islands;

(2) Done by an elected official;

(3) Done by a member of the legislature; or

(4) Done in a hospital or penal institution by a patient or inmate of the hospital or penal institution.

* * * * *

9. Section 404.1071 is amended by revising paragraph (a) to read as follows:

§ 404.1071 Ministers and members of religious orders.

(a) If you are a duly ordained, commissioned, or licensed minister of a church, or a member of a religious order who has not taken a vow of poverty, the services you perform in the exercise of your ministry or in the exercise of duties required by the order (§ 404.1023(c) and (e)) are a trade or business unless you filed for and were granted an exemption from coverage under section 1402(e) of the Code, and you did not revoke such exemption in accordance with the Social Security Amendments of 1977, section 1704(b) of the Tax Reform Act of 1986, or section 403 of the Ticket to Work and Work Incentives Improvement Act of 1999. An exemption cannot be granted if you filed a valid waiver certificate under the provisions of section 1402(e) that apply to taxable years ending before 1968.

* * * * *

§ 404.1093 [Amended]

10. Section 404.1093 is amended by adding ''the Commonwealth of the Northern Mariana Islands,'' after ''Guam.''

§ 404.1096 [Amended]

11. Section 404.1096 is amended in paragraph (d) by adding ''the Commonwealth of the Northern Mariana Islands'' after ''Guam.''

Subpart M—[Amended]

12. The authority citation for subpart M of part 404 continues to read as follows:

Authority: Secs. 205, 210, 218, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 410, 418, and 902(a)(5)); sec. 12110, Pub. L. 99–272, 100 Stat. 287 (42 U.S.C. 418 note); sec. 9002, Pub. L. 99–509, 100 Stat. 1970.

§ 404.1200 [Amended]

13. Section 404.1200 is amended in paragraph (b) by adding ''the Commonwealth of the Northern Mariana Islands'' after ''Guam.''

§ 404.1202 [Amended]

14. In § 404.1202(b), the definition of ''State'' is amended by adding '',the Commonwealth of the Northern Mariana Islands'' after ''Guam.''

[FR Doc. 04–7733 Filed 4–6–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–167265–03]

RIN 1545–BC95

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group; Computation of Taxable Income When Section 108 Applies to a Member of a Consolidated Group; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document corrects a notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations (REG–167265–03) that was published in the **Federal Register** on Monday, March 15, 2003 (69 FR 12091) containing proposed regulations under section 1502 that govern the timing of certain basis adjustments in respect of the realization of discharge of indebtedness income that is excluded from gross income and the reduction of attributes in respect of that excluded income.

FOR FURTHER INFORMATION CONTACT: Candace B. Ewell, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking; notice of proposed rulemaking by cross reference to temporary regulations (REG–167265–03) that is the subject of this correction are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking; notice of proposed rulemaking by cross reference to temporary regulations (REG–167265–03) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking; notice of proposed rulemaking by cross reference to temporary regulations (REG–167265–03) is corrected as follows:

§ 1.1502–11 [Corrected]

1. On page 12095, column 1, § 1.1502–11, paragraph (c)(5), paragraph (i) of *Example 1,* last line in the paragraph, the language ''basis of $0 and a fair market value of $10.'' is corrected to read ''basis of $0 and a fair market of $20.''.

2. On page 12095, column 2, paragraph (c)(5), paragraph (ii) of *Example 1,* line 14, the language ''the principles of § 1.1501–21T(b)(2)(iv), is'' is corrected to read the principles of § 1.1502–21T(b)(2)(iv) is.''.

3. On page 12096, column 3, paragraph (c)(5), paragraph (ii)(E) of *Example* 3, line 10, the language ''COD income in the amount of $100.'' is corrected to read ''COD income in the amount of $80.''.

Cynthia E. Grigsby,

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

[FR Doc. 04–7797 Filed 4–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 519

RIN 0702–AA40–U

Publication of Rules Affecting the Public

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule; Request for comments.

SUMMARY: The Department of the Army is proposing to revise our rules concerning the publication of rules affecting the public to incorporate requirements and policies required by various acts of Congress and Executive Orders, and due to changes in program proponency and policies within the Department of the Army.

DATES: Comments submitted to the address below on or before June 7, 2004 will be considered.

ADDRESSES: You may submit comments, identified by ''32 CFR Part 519 and RIN 0702–AA40'' in the subject line, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Brenda.Kopitzke@rmda.belvoir.army.mil.* Include ''32 CFR Part 519 and RIN 0702–AA40'' in the subject line of the message.
- *Mail:* U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–RP (Ms. Kopitzke), Casey Bldg., Rm. 102, 7701 Telegraph Road, Alexandria, VA 22315–3860.

FOR FURTHER INFORMATION CONTACT: Brenda Kopitzke (703) 428–6437 or Brenda Bowen (703) 428–6422.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed revision prescribes procedures and responsibilities for publishing applicable Department of the Army policies, practices, and procedures as required by statutes. It also delineates responsibilities for complying with this regulation, Regulatory Flexibility Act, 5 U.S.C. 601–612 (E.O. 12866), and the Congressional Review Act (CRA, 5 U.S.C. Chapter 8), within the Department of the Army.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Executive Order 12866

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is not considered a significant regulatory action.

Brenda Kopitzke,

Army Federal Register Liaison Officer.

List of Subjects in 32 CFR Part 519

Administrative practices and procedures.

For the reasons stated in the preamble, the Department of the Army proposes to revise 32 CFR Part 519 to read as follows:

PART 519—PUBLICATION OF RULES AFFECTING THE PUBLIC

Subpart A—General

Sec.
519.1 Purpose.
519.2 Explanation of terms.
519.3 Responsibilities.
519.4 Designation of Rulemaking Coordinators.
519.5 Statement of compliance.
519.6 Submission of publications for printing.
519.7 Regulatory review.

Subpart B—Information to be Published in the Federal Register

519.8 General.
519.9 Information to be published.
519.10 Requirements pertaining to information to be published.
519.11 Incorporation by reference.
519.12 Exceptions.
519.13 Procedures.
519.14 Effect of not publishing.

Subpart C—Inviting Public Comment on Certain Proposed Rules and Submission of Petitions 519.15 General.

519.15 General.
519.16 Applicability.
519.17 Procedure when proposing rules.
519.18 OMB Control Number.
519.19 Consideration of public comment.
519.20 Procedure when publishing adopted rules.
519.21 Submission of petitions.
519.22 Cases in which public comment is impractical.

Authority: Sec. 3012, Pub. L. 84–1028, 70A Stat. 157, (10 U.S.C. 3013); sec. 3, Pub. L. 79–404, 60 Stat. 238, (5 U.S.C. 552).

Subpart A—Genreal

§ 519.1 Purpose.

This regulation prescribes procedures and responsibilities for publishing certain Department of the Army policies, practices and procedures in the **Federal Register** as required by statute, and for inviting public comment thereon, as appropriate. This regulation implements portions of the Administrative Procedure Act (APA), 5 U.S.C. 551, Freedom of Information Act (FOIA), 5 U.S.C. 552(a)(1), as implemented by 32 CFR Part 335, Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), as implemented by 1 CFR Chapter 1, Congressional Review Act (CRA), 5 U.S.C. Chapter 8, Executive Order 12866 of September 30, 1993, and DODD 5025.1, DOD Directives System.

§ 519.2 Explanation of terms.

(a) Rule. The whole or a part of any Department of the Army Statement (regulation, circular, directive, or other media) of general or particular applicability and future effect, which is designed to implement, interpret, or prescribe law or policy or which describes the organization, procedure, or practice of the Army.

(b) **Federal Register**. A document published daily, Monday through Friday (except holidays), by the Office of the Federal Register, to inform the public about the regulations of the executive branch and independent administrative agencies of the U.S. Government. The **Federal Register** includes Presidential proclamations, Executive orders, Federal agency documents having general applicability and legal effect or affecting the public, and documents required to be published by Act of Congress.

(c) Code of Federal Regulations. The annual codification of rules published by each Federal Agency. It is divided into 50 titles representing broad subject areas for each Federal Agency and these titles are further subdivided into Chapters, Subchapters, Parts, and Subparts. Army documents are published in Title 32, National Defense, Title 33, Navigation and Navigable Waters, and Title 36, Parks, Forests, and Public Property. (The **Federal Register** and the Code of Federal Regulations must be used together to determine the latest version of any given rule.)

(d) Closed Meeting. A meeting that is closed to the public.

(e) Open Meeting. A meeting that is open to the public.

§ 519.3 Responsibilities.

(a) The Administrative Assistant to the Secretary of the Army (AASA) acts as the regulatory officer and has oversight of the Army Federal Regulatory Program and Unified Agenda. The AASA will coordinate with Assistant Secretary for Civil Works (ASA (CW)) and the Deputy Chief of Staff, G–1 (DCS, G–1) to ensure the regulatory requirements and functions are properly executed.

(b) The ASA (CW) will submit the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the AASA as required by Executive Order 12866 and 5 U.S.C. 601, *et seq.*

(c) The DCS, G–1 will develop policy and direction for the Rulemaking Program for the Department of the Army.

(d) The U.S. Army Records Management and Declassification Agency (RMDA) is responsible for policies concerning Army announcements and rules (proposed, interim, and final) published in the **Federal Register**, and for ensuring Army compliance with this part. The RMDA shall—

(1) Assist the officials listed in Table 1 in the performance of their responsibilities.

(2) Represent the Army in submitting to the Office of the Federal Register (OFR) any matter published per this part.

(3) Submit the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the AASA as required by Executive Order 12866 and 5 U.S.C. 601, *et seq.*

(4) Submit a copy of published final rules (and certain analyses related to the

rule, as appropriate) to both Houses of Congress and to the General Accounting Office (GAO), per the CRA.

(e) The U.S. Army Corps of Engineers (USACE) shall—

(1) Represent the Army in submitting to the OFR only those Civil Works Program rules (proposed, interim, and final) codified in Title 33, Navigation and Navigable Waters, and Title 36, Parks, Forests, and Public Property of the CFR, subject to the terms of this part.

(2) Submit a copy of published final rules (and certain analyses related to the rule, as appropriate) to both Houses of Congress and to the General Accounting Office (GAO), per the CRA.

(3) When submitting rules codified in Titles 33 and 36 of the CFR, USACE may coordinate directly with OFR (in lieu of RMDA) but must otherwise comply with the provisions of this part. In determining the applicability of this regulation to its rulemaking activities, Army Civil Works rulemaking proponents may replace ''RMDA'' with ''USACE,'' wherever it appears in the text of this part.

(f) The officials listed in Table 1 (hereinafter referred to as proponents) are responsible for:

(1) Ensuring maximum practicable participation of the public in the formulation of Army rules that affect the public by allowing public comments in proposed rules. Where deemed appropriate by the Army proponents, the public should participate in consensual mechanisms, such as negotiated rulemaking.

(2) Determining which matters within their areas of jurisdiction must be published in accordance with §§ 519.8 through 519.14, and for submission actions specified in §§ 519.15 through 519.22.

(g) Legal officers and staff judge advocates supporting the proponents will provide legal advice and assistance in connection with proponent responsibilities contained herein.

TABLE 1.—RULEMAKING PROPONENTS

Official	Area of jurisdiction
Administrative Assistant to the Secretary of the Army.	Immediate Office of the Secretary of the Army and the Office of the Administrative Assistant.
Director of the Army staff.	Elements, Office of the Chief, U.S. Army.
Head of each Army staff agency.	Headquarters of the agency and its field operating and staff agencies (including the Installation Management Agency (IMA)).
Commander, MACOM.	Headquarters of MACOM and all subordinate activities and units.
RMDA	All other Army elements not covered above.

§ 519.4 Designation of Rulemaking Coordinators.

The officials listed in Table 1 will designate Rulemaking Coordinators to perform the duties prescribed by §§ 519.15 through 519.22 of this part for their areas of functional responsibility. At the time of designation, the RMDA shall be informed of the name and telephone number of the designated individual. The designee will perform the following duties:

(a) Ensure that all rules and notices to be published comply with the **Federal Register** format.

(b) Transmit material to RMDA and provide RMDA with the name, office symbol, and telephone number of the action officer for each rule or general notice for inclusion in the **Federal Register**.

(c) Coordinate with Publication Control Officers to ensure submission of Statements of Compliance required by § 519.5.

(d) Notify RMDA, ATTN: AHRC–PDD–RP, 7701 Telegraph Road, Alexandria, VA 22315–3860, when a regulation published in the **Federal Register** becomes obsolete or is superseded by another regulation.

§ 519.5 Statement of compliance.

In order to ensure compliance with the part, no rule will be issued unless there is on file with RMDA (AHRC–PDD–RP) a statement to the effect that it has been evaluated under the provisions of this part. If the proponent determines that the provisions of this part are inapplicable, such determination shall be explained in the statement.

§ 519.6 Submission of publications for printing.

When Army-wide publications or directives are transmitted to the Director, U.S. Army Publishing Directorate (USAPD) for publication, the DA Form 260 (Request for Printing of Publication) or other transmittal paper will contain a statement that the directive has been processed for publication in the **Federal Register** or that it falls within the exempted category. USAPD will not publish any rule unless this statement is on DA Form 260. A copy of DA Form 260 may be submitted to RMDA in lieu of the statement required by § 519.5.

§ 519.7 Regulatory review.

(a) Proponents of Army regulations shall participate in the regulatory process and adhere to the regulatory process as prescribed in this regulation when reviewing their existing publications. This review will follow the same procedural steps outlined for the development of new regulations.

(b) In selecting regulations to be reviewed, proponents shall consider such criteria as:

(1) The requirement for the regulation.

(2) Costs and benefits of the regulation to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures.

(3) The type and number of complaints or suggestions received.

(4) Burdens imposed directly or indirectly by the regulation to both the public and other government entities.

(5) Elimination of inconsistent, incompatible, overlapping or duplicative regulations.

(6) Length of time since the regulation has been reviewed for scientific, technological, economical, or administrative changes.

Subpart B—Information to be Published in the Federal Register

§ 519.8 General.

The Administrative Procedure Act, as amended by the Freedom of Information Act, requires that certain policies, practices, procedures, and other information concerning the Department of the Army be published in the **Federal Register** for the guidance of the public. In addition, various statutory and nonstatutory authorities, as applicable, may require certain actions and studies performed in conjunction with the publication of the regulation. In general, this information explains where, how, and by what authority the Army performs any of its functions that affect the public. This chapter describes what information must be published and the effect of failing to publish it.

§ 519.9 Information to be published.

In deciding which information to publish, consideration shall be given to the fundamental objective of informing all interested persons of how to deal effectively with the Department of the Army. Subject to the exceptions provided in § 519.12 of this part, information to be currently published will include:

(a) Descriptions of the Army's central and field organization and the

established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(b) The procedures by which the Army conducts its business with the public, both formally and informally.

(c) Rules of procedures, descriptions of forms available or the places at which forms may be obtained, and the instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of applicability to the public adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Army.

(e) Documents which confer a right or privilege on a segment of the public or have a direct or substantial impact on the public or any significant portion of the public.

(f) Documents that prescribe a course of conduct that must be followed by persons outside the government to avoid a penalty, or secure a right or privilege.

(g) Documents which impose an obligation on the general public or members of a class persons outside the U.S. Government.

(h) Rules (significant) that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way, the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

(i) Open, partially-closed, and closed meetings which require members to take action on behalf of the Army where such deliberations determine or result in the joint conduct or disposition of Army business. Meetings shall be published a minimum of 15 calendar days prior to date of meeting or as prescribed by the appropriate statute. Sunshine Act meetings are published in compliance with 5 U.S.C. 552b(e)(3); attendance at these meetings may be restricted for reasons of national security or for reasons indicated in 5 U.S.C. 552b(c). Notice of Sunshine Act meetings must be published at least one week prior to the date of the meeting (5 U.S.C. 552b(e)).

(j) Notices of establishment or renewal of advisory committees in accordance with their directives, statutory and/or nonstatutory authority.

(k) Public information collection requirements in compliance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*)

(l) Descriptions of particular programs, policy, or procedures in detail such as—__

(1) Decisions and ruling;

(2) Grant application deadlines;

(3) Availability of Environmental Impact Statements;

(4) Delegations of authority;

(5) Issuance or revocation of licenses; and

(6) Hearings and investigations.

(m) Each amendment, revision, or repeal of the foregoing.

§ 519.10 Requirements pertaining to the information to be published.

The following procedures shall be completed before submitting rules/regulations for publication—

(a) An economic analysis (EA) of the proposed or existing regulation. The EA should assess the effects of the regulation on the State, local, and tribal governments, and the private sector. An EA threshold of an annual effect on the economy of $100 million or more has been established for all regulations (Executive Order 12866.)

(b) Regulations containing collection of information requirements will be forwarded through the DCS, G–1 (DAPE–ZXI–RM) to OMB prior to publication as a proposed rule in the **Federal Register**. In addition, the proponent will address any collection of information comments filed by the Director, OMB, or the public in the final rule.

(c) Statutory and nonstatutory authorities mandate regulatory review of all DA proposed, interim, final, and withdrawn rules/regulations. The results are published in the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions. Under the requirements of regulatory review, the proponent will notify RMDA when—

(1) Drafting a regulation that would affect the public.

(2) Reviewing regulations for revision or rescission.

(3) Rescinding a regulation.

§ 519.11 Incorporation by reference.

(a) Incorporation by reference allows the proponent to comply with the requirements to publish regulations in the **Federal Register** by referencing materials published elsewhere (*e.g.* materials that may be purchased from the Government Printing Office (GPO) or depot libraries or are available for review at Army installations.) Incorporated material has the same force and legal effect as any other properly issued regulation. Before a document can be incorporated by reference, the proponent must determine that it is available to the public (*See* 5 U.S.C. 552(a) and 1 CFR Part 51).

(b) Material is eligible for incorporation by reference if it—

(1) Is published data, criteria, standards, specifications, techniques, illustrations or similar materials.

(2) Is reasonably available to and usable by the class of persons affected by the publication.

(3) Does not reduce the usefulness of the **Federal Register** publication system.

(4) Benefits the Federal Government and members of affected classes.

(5) Substantially reduces the volume of material published in the **Federal Register**.

(c) Incorporation by reference is not acceptable as a complete substitute for promulgating in full the material required to be published. It may, however, be utilized to avoid unnecessary repetition of published information already reasonably available to the class of persons affected. Examples include:

(1) Construction standards issued by a professional association of architects, engineers, or builders;

(2) Codes of ethics issued by professional organizations; and,

(3) Forms and formats publicly or privately published and readily available to the person required to use them.

(d) Proposals for incorporation by reference will be submitted to Director, RMDA, by letter giving an identification and subject description of the document statement of availability, indicating the document will be reasonably available to the class of persons affected, where and how copies may be purchased or examined, and justification for the requirement to incorporate by reference. The request will be submitted to RMDA at least 25 working days before the proposed date for submission of the incorporation by reference notice for the **Federal Register**. The 25 working day period begins when RMDA receives the request.

(e) RMDA will consult with the Director, OFR concerning each specific request and will notify the proponent of the outcome of the consultation.

(f) The proponent will submit to RMDA a general notice upon approval from the Director, OFR to the proposal for incorporation by reference.

(g) Requirements for updating material incorporated by reference.

(1) An amendment to the CFR must be published in the **Federal Register**.

(2) The proponent must provide RMDA a copy of the incorporated material, as amended or revised, to submit to the OFR.

(3) RMDA will notify the Director, OFR of the changes.

(h) The proponent will notify RMDA within 10 working days if the rule does not go into effect or when the rule containing the incorporation by reference is removed.

§ 519.12 Exception.

(a) In accordance with 5 U.S.C. 552(b) the Army shall not publish any rule in the **Federal Register** if:

(1) It pertains to a military or foreign affairs function of the United States that, under the criteria of an Executive Order or statute, requires a security classification in the interest of national defense.

(2) It is directed at other Federal agencies, particular persons, or Army organizations.

(3) It is directed to individual persons in their capacity as Army employees.

(4) It is limited to Army management, organization, public contracts, to include nonappropriated fund contracts, or personnel matters.

(b) A rule issued at the installation level that affects only the people near a particular post does not ordinarily apply to the general public, so the Army does not usually publish it in the **Federal Register**.

(c) It is not necessary to publish in the **Federal Register** any information which comes within one or more of the exemptions to the FOIA, 5 U.S.C. 552(b), as implemented by AR 25–55, para. 3–200.

§ 519.13 Procedures.

All matters to be published in accordance with this part will be submitted to the Director, RMDA in the proper format prescribed in § 519.17. As provided in § 519.3(e) of this part, Army Civil Works proponents who are proposing rules for publication in Titles 33 and 36 of the CFR may submit the required documents directly to the OFR but must otherwise comply with the provisions of this part.

§ 519.14 Effect of not publishing.

Except to the extent that a person has actual and timely notice thereof, the Army cannot require the general public to comply with, or be adversely affected by, a policy requirement, as determined in § 519.9, until it is published in the **Federal Register**.

Subpart C—Inviting Public Comment on Certain Proposed Rules and Submission of Petitions

§ 519.15 General.

Public comment must be sought on certain proposed rules which are required to be published in accordance with § 519.9. All regulations affecting the public will be forwarded to RMDA for review and coordination with OMB. This subpart sets forth the criteria and procedures for inviting public comment before publication.

§ 519.16 Applicability.

(a) These provisions apply only to those Department of the Army rules or portions thereof that:

(1) Are promulgated after [Insert the effective date of this regulation];

(2) Must be published in the **Federal Register** in accordance with § 519.9;

(3) Have a substantial and direct impact on the public or any significant portion of the public; and

(4) Do not merely implement a rule already adopted by a higher element within the Department of the Army or by the Department of Defense.

(b) Unless otherwise required by law, the requirement to invite advance public comment on proposed rules does not apply to those rules or portions thereof that:

(1) Do not come within the purview of paragraph § 519.16(a) of this section;

(2) Involve any matter relating to a military or foreign affairs function of the United States which has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy;

(3) Involve any matter relating to Department of the Army management, personnel, or public contracts, *e.g.,* Armed Services Procurement Regulation, including nonappropriated fund contracts;

(4) Constitute interpretative rules, general statements of policy or rules of organization, procedure or practice; or

(5) The proponent of the rule determines for good cause that inviting public comment would be impracticable, unnecessary, or contrary to the public interest. This provision will not be utilized as a convenience to avoid the delays inherent in obtaining and evaluating prior public comment. *See* also § 519.22.

§ 519.17 Procedure when proposing rules.

(a) A description of the proposed rule will be forwarded to the Federal Register Liaison Officer (FRLO) for regulatory and OMB review. The FRLO will provide a Regulation Identifier Number (RIN), used to identify and report the rule in the Unified Agenda to the proponent once OMB has approved the rule for publication in the Proposed Rule section of the **Federal Register**. Proposed rules that have unresolved issues shall not be published in the **Federal Register**.

(b) The preamble and the proposed rule will be prepared by the proponent. Preparation of the preamble and rule shall be in accordance with guidance contained in the Federal Register Handbook on Document Drafting.

(c) Public comment will be invited with a designated time, not less than 60 days prior to the intended adoption of the proposed rule.

(d) Rulemaking proponents will submit the original and three copies of the proposed rules and preamble in the prescribed format, to the Director, RMDA. The FRLO will ensure that the approved rules comply with executive and legislative requirements, and have the necessary coordination with OMB prior to publication. Upon OMB approval, the FRLO will certify and submit the documents to the Office of the Federal Register for publication as a proposed, interim, or final rule, as applicable.

(e) If no action has occurred within 1 year of publication, the proposed rule shall be considered for withdrawal, unless the proponent provides justification to RMDA. If the proponent determines that the proposed rule should be withdrawn, the proponent will submit a document to the FRLO to be published in the **Federal Register** withdrawing the proposed rule. The withdrawal of the proposed rule will be reported in the next edition of the Unified Agenda.

(f) Civil Works projects under the ASA (CW) shall submit updated and proposed Unified Agenda items to AASA.

§ 519.18 OMB Control Number.

Each rule OMB reviews under the Paperwork Reduction Act is assigned an OMB control number which becomes its identifier throughout its life.

§ 519.19 Consideration of public comment.

(a) Following publication of a notice of proposed rulemaking, all interested persons will be given an opportunity to participate (60 days) in the rulemaking through the submission of written data, views and arguments to the proponent of the proposed rulemaking concerned.

(b) If the proponent of the rule determines that it is in the public interest, a hearing or other opportunity for oral presentation of view may be allowed as a means of facilitating public

comment. Informal consultation by telephone or otherwise may also be utilized to facilitate presentation of oral comments by interested persons. All hearings or other oral presentations will be conducted by the proponent of the rule in a manner prescribed by him/her. A hearing file shall be established for each hearing. The hearing file shall include:

(1) Public notices issued;

(2) Request for the hearing;

(3) Data or material submitted in justification thereof;

(4) Materials submitted in opposition to the proposed action;

(5) Hearing transcript; and

(6) Any other material as may be relevant or pertinent to the subject matter of the hearing.

(c) There is no requirement to respond either orally or in writing, individually to any person who submits comments with respect to a proposed rule. The proponent of the rule, however, may do so as a matter within his/her discretion.

§ 519.20 Procedure when publishing adopted rules.

(a) After careful consideration of all relevant material submitted, the proponent of the rule will make such revisions in the proposed rule as appear necessary in light of the comments received.

(b) If it is impractical for the rule proponent to finalize the rule after the comment period, due to extensive unresolved issues, the proponent will publish a document withdrawing the proposed rule.

(c) The proponent will prepare a preamble for publication with the final rule. The proponent shall discuss in the preamble the comments received in response to the proposed rule and the decision to accept or reject the comments in the revision to the proposed rule. Preparation will be in accordance with guidance contained in the **Federal Register** Handbook on Document Drafting.

(d) The original and three copies of the preamble and revised rule will be forwarded to the FRLO in the proper format. The FRLO will then prepare the required certification and submit the documents to the Office of the Federal Register for publication in the form of an adopted rule.

(e) The proponent shall provide to the FRLO, a copy of the final rule, a completed OMB Form ''Submission of Federal Rules Under the Congressional Review Act'' (available at *http://www.whitehouse.gov/WH/EOP/OMB* and *http://www.gao.gov*), and a concise statement about the rule within 14 days of publication date in the **Federal Register**. The proponent will identify whether it is a major or a substantive/nonsignificant rule, its proposed effective date, significant issues of interest, and a cost-benefit analysis of the rule, as applicable. The FRLO will submit a copy of all final rules to both Houses of Congress and the Government Accounting Office (GAO) per CRA.

(f) Army Civil Works rulemaking proponents, when proposing rules governed by § 519.3(e) of this regulation, may forward the documents prescribed in § 519.20(d) and (e) directly to the OFR. Army Civil Works proponents are responsible for submitting a copy of the final rules to Congress and GAO in accordance with § 519.20(e).

§ 519.21 Submission of petitions.

Each proponent of a rule will grant to any interested person the right to submit a written petition calling for the issuance, amendment, or repeal of any rule to which this part applies or would apply if issued, as specified in § 519.16. Any such petition will be given full and prompt consideration by the proponent. If compatible with the orderly conduct of public business, the appropriate official may, at his discretion, allow the petitioner to appear in person for the purpose of supporting this petition. After consideration of all relevant matters by the proponent, the petitioner will be advised in writing by the proponent of the disposition of any petition, together with the reasons supporting that disposition. This provision does not apply to comments submitted on proposed rules in § 519.19.

§ 519.22 Cases in which public comment is impractical.

(a) Whenever a rulemaking proponent determines for good cause that inviting public comment regarding a proposed rule would be impractical, unnecessary, or contrary to the public interest, he will prepare a brief statement of the reasons supporting this determination for incorporation in the preamble to the adopted rule. The preamble and adopted rule will then be published in the form outlined in § 519.20(c) and (d).

(b) Alternatively, the proponent may request Director, RMDA (by letter) to adopt and publish in the **Federal Register** a separate rule exempting from the prepublication notice provisions of this regulation those specific categories of rules which the rulemaking proponent has determined that public comment would be unnecessary, impractical, or contrary to the public interest. The request to RMDA, will contain an explanation of the reasons why the proponent believes that a particular category of rule or rules should not be published in proposed form for public comment and a legal review by the proponent's servicing legal office. If RMDA, in coordination with the Office of Army General Counsel, agrees that public comment should not be invited with respect to the cited category, the proponent will adopt and publish a separate rule in the **Federal Register** exempting such rule or rules from the requirements of this part. This separate rule will include an explanation of the basis for exempting each particular category from the provisions of this part.

[FR Doc. 04–7613 Filed 4–6–04; 8:45 am]

BILLING CODE 3710–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY62–261, FRL–7644–3]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for a Specific Source in the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to conditionally approve a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New York. This SIP revision consists of a source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen from the sodium nitrite manufacturing plant operated by General Chemical Corporation. This action proposes a conditional approval of the source-specific RACT determination that was made by New York in accordance with provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this proposed rule is to conditionally approve source-specific emission limitations required by the Clean Air Act.

DATES: Written comments must be received on or before May 7, 2004.

ADDRESSES: Comments may be submitted by mail to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Comments may also be submitted

electronically, or through hand delivery/courier. Please follow the detailed instructions described in the ''General Information'' section of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Air Programs Branch, Environmental Protection Agency Region II, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4014, *Ruvo.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

Overview

The Environmental Protection Agency (EPA) is proposing to conditionally approve the New York State Department of Environmental Conservation's (New York's) source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen (NO_X) from the sodium nitrite manufacturing plant operated by General Chemical Corporation (General Chemical).

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

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EPA's Proposed Action

What Action Is EPA Proposing Today?

EPA is proposing a conditional approval of New York's revision to the ozone State Implementation Plan (SIP) submitted to EPA on April 12, 2000, and supplemented on May 12, 2000, May 16, 2000, October 10, 2002, and February 24, 2003. This SIP revision relates to New York's NO_X RACT determination for General Chemical's sodium nitrite manufacturing plant located in Solvay, Onondaga County.

Why Is EPA Proposing This Action?

EPA is proposing this action to:

- Give the public the opportunity to submit comments on EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections.
- Fulfill New York's and EPA's requirements under the Clean Air Act (the Act).
- Require that New York's RACT determination consider recent developments in emission control technology.
- Require that New York's RACT determination be federally-enforceable.

What Are EPA's Proposed Conditions for Approval?

EPA is proposing the following three conditions for approving New York's source-specific SIP revision for General Chemical's NO_X RACT plan:

1. New York and General Chemical must provide a reassessment of RACT, in a format consistent with the ''EPA Air Pollution Control Cost Manual,'' January 2002 (EPA 452/B–02–001), *http://www.epa.gov/ttn/catc/products.html.* The RACT reassessment must include, but not be limited to, the following:
- Analysis of the technical and economic feasibility of installing selective catalytic reduction (SCR) technology, including the complete evaluation of studies and processes at other similar facilities outside of the United States.
- Complete technical evaluation of switching from soda ash to sodium hydroxide, also known as caustic soda, for the entire manufacturing process, as well as a cost-effectiveness analysis of such a switch.
- Correction of Director Discretion provision in any existing or future permit conditions which require a RACT reassessment with language reflecting that the reassessment be approved by New York and EPA as a SIP revision.

2. New York and General Chemical must demonstrate compliance with the NO_2 National Ambient Air Quality Standard, based on a cumulative air quality modeling analysis, consistent with EPA Guidance, as provided under section 110 of the Act.

3. New York and General Chemical must provide continuous emissions monitoring (CEM) data from the last two years, or any other two years since the 1997 State-approval of General Chemical's RACT analysis which are determined to be more representative of normal source operation.

These areas of New York's SIP revision and General Chemical's NO_X RACT plan did not fully satisfy New York's NO_X RACT regulations and EPA's NO_X RACT guidance and SIP revision requirements. A Technical Support Document (TSD), prepared in support of this proposed action, contains a detailed description of EPA's conditions for approval, as well as a detailed description of New York's submittal and EPA's evaluation. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section.

How Can New York Get Full Approval for This SIP Revision?

EPA is proposing conditional approval of New York's SIP revision, provided New York commits in writing, on or before May 7, 2004, to correct the deficiencies discussed in the ''What Are EPA's Proposed Conditions for Approval?'' section. New York must then correct the deficiencies and submit them to EPA within one year of EPA's final action on this SIP revision.

If New York submits a commitment to comply with EPA's conditions, EPA will publish a final conditional approval of New York's SIP revision. EPA will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the April 12, 2000, submittal. Note that New York's February 24, 2003, supplementary submittal, which requested EPA to condition approval of the General Chemical SIP revision, only addressed the condition to reassess SCR in the RACT analysis. Therefore, New York must submit another commitment to comply with all of EPA's conditions. If New York does not make the required commitment to EPA, EPA is proposing in the alternative, to disapprove the SIP revision.

What Are the Clean Air Act Requirements for NO_X RACT?

The Act requires certain states to develop RACT regulations for major stationary sources of NO_X and to provide for the implementation of the required measures as soon as practicable but no later than May 31, 1995. Under the Act, the definition of major stationary source is based on the tons per year (tpy) of air pollution a source emits and the quality of the air in the area of the source. In ozone transport regions, attainment/unclassified areas, as well as marginal and moderate ozone nonattainment areas, a major stationary source for NO_X is considered to be one which emits or has the potential to emit 100 tpy or more of NO_X and is subject to the requirements of a moderate nonattainment area. New York is within the Northeast ozone transport region, established by section 184(a) of the Act.

New York has defined a major stationary source of NO_X as a source which has the potential to emit 25 tpy in the New York City and lower Orange County metropolitan areas and 100 tpy in the rest of the State. Consequently, all major stationary sources of NO_X within the State of New York are required to implement RACT no later than May 31, 1995. For detailed information on the Act requirements for NO_X RACT see the TSD prepared for today's proposal.

What Is EPA's Evaluation of New York's SIP Revision?

EPA has determined New York's SIP revision for New York's NO_X RACT determination for General Chemical's Sodium Nitrite Manufacturing Plant is consistent with New York's NO_X RACT regulation and EPA's guidance, except for the deficiencies discussed in the "What Are EPA's Proposed Conditions for Approval?'' section. EPA's basis for evaluating New York's SIP revision, is whether it meets the SIP requirements described in section 110 of the Act. EPA has determined that New York's SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act, once New York addresses the conditions for approval.

After reviewing New York's SIP revision submittal, on May 18, 2000, EPA determined it to be administratively and technically complete. The SIP revision was a request, by New York, for EPA approval of source-specific emission limitations developed in accordance with title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) part 212 provisions for process sources. New York has issued to the owner a permit with special conditions which are fully enforceable by the State and which contain conditions consistent with part 212.

EPA has determined that, provided New York agrees to EPA's commitment request, until such time that New York complies with all of EPA's conditions for approval and submits them to EPA as a SIP revision, the NO_X emission limits identified in New York's special permit conditions represent RACT for General Chemical's sodium nitrite manufacturing process. More specifically, EPA proposes to conditionally approve the source-specific NO_X emission limitation of 172 pounds of NO_X per hour for each unit, based on efficient plant operation as currently configured. The permit conditions include emission limits, work practice standards, testing, monitoring, and recordkeeping/reporting requirements. These permit conditions are consistent with the NO_X RACT requirements specified in part 212 and conform to EPA's NO_X RACT guidance. Therefore, EPA is proposing to conditionally approve the source-specific SIP revision submitted by New York dated April 12, 2000, as supplemented on May 12, 2000, May 16, 2000, October 10, 2002, and February 24, 2003. Please note there may be other requirements, such as adequate monitoring, which States and sources will need to provide for, through the Title V permitting process.

New York's SIP Revision

What Are New York's NO_X RACT Requirements?

On January 20, 1994, New York submitted to EPA for approval as a revision to the SIP, 6 NYCRR Subpart 227–2, the State's NO_X RACT plan entitled "Reasonably Available Control Technology For Oxides of Nitrogen (NO_X RACT)—Stationary Combustion Installations.'' Subpart 227–2 provides the NO_X RACT requirements for combustion sources in New York and it became effective 30-days after being adopted on January 19, 1994. On April 29, 1999, New York submitted amendments to Subpart 227–2 as part of the State's NO_X Budget Trading Program (Part 227–3) SIP revision. On April 28, 2000, the EPA final approval action on the two SIP revisions for Subpart 227–2 was published in the **Federal Register** (65 FR 24875). On May 22, 2001, the EPA final approval action on another amendment to subpart 227–2 was published in the **Federal Register** (66 FR 28059).

On July 8, 1994, New York submitted, to EPA for approval as a revision to the SIP, 6 NYCRR part 212 entitled "General Process Emission Sources.'' Part 212 addresses the Act's NO_X RACT requirements for process sources. On September 25, 2001, the EPA final approval action on part 212 was published in the **Federal Register** (66 FR 48957).

What Are New York's Facility-Specific NO_X RACT Requirements?

Provisions within part 212 establish a procedure for a case-by-case determination of what represents RACT for an item of equipment, process or source. Facilities which conduct a RACT analysis are required to review control device technologies, technically feasible control strategies, and capture efficiencies of these controls for NO_X sources, keeping in mind the reasonable economics of RACT. The process specific RACT demonstrations are required to be submitted to EPA for approval as SIP revisions. These provisions of part 212 are consistent with EPA guidance.

When Was New York's RACT Determination Proposed and Adopted?

New York's RACT determination was proposed on August 27, 1997, allowing 30 days for public comments. New York adopted the RACT determination on December 16, 1997.

When Was New York's SIP Revision Submitted to EPA?

New York's SIP revision was submitted to EPA on April 12, 2000. On May 18, 2000, EPA determined the submittal to be administratively and technically complete. Today's proposal is based on the April 12, 2000, SIP revision, as supplemented on May 12, 2000, May 16, 2000, October 10, 2002, and February 24, 2003.

General Information

How Can I Get Copies of This Document and Other Related Information?

The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under Region 2 Docket Number NY62–261. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency New York Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233.

Electronic Access. You may access this **Federal Register** document

electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

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 rulemaking identification number by including the text "Public comment on proposed rulemaking [Region 2 Docket Number NY62–261]'' 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.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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.

E-mail. Comments may be sent by electronic mail (e-mail) to *Werner.Raymond@epa.gov,* please include the text "Public comment on proposed rulemaking [Region 2 Docket Number NY62–261]'' in the subject line. EPA's e-mail system is not an "anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, 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.

Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE'', and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866; Please include the text "Public comment on proposed rulemaking [Region 2 Docket Number NY62–261]'' in the subject line on the first page of your comment.

By Hand Delivery or Courier. Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Conclusion

EPA is proposing to conditionally approve the New York SIP revision for a source-specific RACT determination for General Chemical's sodium nitrite manufacturing plant. This SIP revision contains source-specific NO_X emission limitations for General Chemical. EPA is proposing conditional approval of New York's SIP revision, provided New York commits in writing, on or before May 7, 2004, to correct the deficiencies discussed in the "What Are EPA's Proposed Conditions for Approval?'' section. New York must then correct the deficiencies and submit them to EPA as a SIP revision within one year of EPA's final action on this SIP revision.

If New York submits a commitment to this effect in writing, on or before May 7, 2004, EPA will publish a final conditional approval of New York's SIP revision. EPA will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the SIP submittal. If New York does not make the required commitment to EPA, EPA is proposing, in the alternative, to disapprove the SIP revision.

EPA is requesting public comment on the issues discussed in today's action. EPA will consider all public comments before taking final action. Interested

parties may participate in the Federal rulemaking procedure by submitting comments to the EPA Regional office listed in the **ADDRESSES** section.

Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: March 23, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 04–7862 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ61–260, FRL–7644–4]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for a Specific Source in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to conditionally approve a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. This SIP revision consists of a source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen from the sodium nitrite manufacturing plant operated by Repauno Products, LLC. This action proposes a conditional approval of the source-specific RACT determination that was made by New Jersey in accordance with provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this proposed rule is to conditionally approve source-specific emission limitations required by the Clean Air Act.

DATES: Written comments must be received on or before May 7, 2004.

ADDRESSES: Comments may be submitted by mail to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the ''General Information'' section of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Air Programs Branch, Environmental Protection Agency Region II, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4014, *Ruvo.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

Overview

The Environmental Protection Agency (EPA) is proposing to conditionally approve the New Jersey State Department of Environmental Protection's (New Jersey's) source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen (NO_X) from the sodium nitrite manufacturing plant operated by Repauno Products, LLC (Repauno).

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

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EPA's Proposed Action

What Action Is EPA Proposing Today?

EPA is proposing a conditional approval of New Jersey's revision to the ozone State Implementation Plan (SIP) submitted to EPA on July 1, 1999, and supplemented on September 12, 2002, September 26, 2002, April 3, 2003, and May 8, 2003. This SIP revision relates to New Jersey's NO_X RACT determination for Repauno's sodium nitrite manufacturing plant located in Gibbstown, Gloucester County.

Why Is EPA Proposing This Action?

EPA is proposing this action to:

- Give the public the opportunity to submit comments on EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections.
- Fulfill New Jersey's and EPA's requirements under the Clean Air Act (the Act).
- Require that New Jersey's RACT determination consider recent developments in emission control technology.
- Require that New Jersey's RACT determination be federally-enforceable.

What Are EPA's Proposed Conditions for Approval?

EPA is proposing the following two conditions for approving New Jersey's source-specific SIP revision for Repauno's NO_X RACT plan:

1. New Jersey and Repauno must reassess as part of the RACT analysis, the technical and economic feasibility of installing selective catalytic reduction (SCR) technology to control NO_X emissions from Repauno's sodium nitrite manufacturing process. The economic feasibility should be in a format consistent with the "EPA Air Pollution Control Cost Manual,'' January 2002 (EPA 452/B–02–001), *http://www.epa.gov/ttn/catc/products.html;* and,

2. New Jersey and Repauno must provide recent continuous emissions monitoring (CEM) data from the last two years, or any other two years since the 1999 State-approval of Repauno's RACT analysis which are determined to be more representative of normal source operation.

These areas of New Jersey's SIP revision and Repauno's NO_X RACT plan did not fully satisfy New Jersey's NO_X RACT regulations and EPA's NO_X RACT guidance and SIP revision requirements. A Technical Support Document (TSD), prepared in support of this proposed action, contains a detailed description of EPA's conditions for approval, as well as a detailed description of New Jersey's submittal and EPA's evaluation. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section.

How Can New Jersey Get Full Approval for This SIP Revision?

EPA is proposing conditional approval of New Jersey's SIP revision, provided New Jersey commits in writing, on or before May 7, 2004, to correct the deficiencies discussed in the "What Are EPA's Proposed Conditions for Approval?'' section. New Jersey must then correct the deficiencies and submit them to EPA within one year of EPA's final action on this SIP revision.

If New Jersey submits a commitment to comply with EPA's conditions, EPA will publish a final conditional approval of New Jersey's SIP revision. EPA will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the July 1, 1999, submittal. If New Jersey does not make the required commitment to EPA, EPA is proposing to disapprove the SIP revision.

What Are the Clean Air Act Requirements for NO_X RACT?

The Act requires certain states to develop RACT regulations for major stationary sources of NO_X and to provide for the implementation of the required measures as soon as practicable but no later than May 31, 1995. Under the Act, the definition of major stationary source is based on the tons per year (tpy) of air pollution a source emits and the quality of the air in the area of the source. In ozone transport regions, attainment/unclassified areas as well as marginal and moderate ozone nonattainment areas, a major stationary source for NO_X is considered to be one which emits or has the potential to emit 100 tpy or more of NO_X and is subject to the requirements of a moderate nonattainment area. New Jersey is within the Northeast ozone transport region, established by section 184(a) of the Act, and has defined a major stationary source for NO_X as a source which has the potential to emit 25 tpy, the level set for severe ozone nonattainment areas. Consequently, all major stationary sources of NO_X within the State of New Jersey are required to implement RACT no later than May 31, 1995. For detailed information on the Act requirements for NO_X RACT *see* the TSD prepared for today's proposal.

What Is EPA's Evaluation of New Jersey's SIP Revision?

EPA has determined New Jersey's SIP revision for New Jersey's NO_X RACT determination for Repauno's sodium nitrite manufacturing plant is consistent with New Jersey's NO_X RACT regulation and EPA's guidance, except for the deficiencies discussed in the "What Are EPA's Proposed Conditions for Approval?'' section.

EPA's basis for evaluating New Jersey's SIP revision, is whether it meets the SIP requirements described in section 110 of the Act. EPA thinks that New Jersey's SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act, once New Jersey addresses the conditions for approval.

After reviewing New Jersey's SIP revision submittals, EPA found them all administratively and technically complete. EPA has determined that, provided New Jersey agrees to EPA's commitment request, until such time that New Jersey complies with all of EPA's conditions for approval and submits them to EPA as a SIP revision, the NO_X emission limits identified in New Jersey's Conditions of Approval document represents RACT for Repauno's sodium nitrite manufacturing process. The conditions contained in the Conditions Of Approval Document currently specify emission limits, work practice standards, and testing, monitoring, and record keeping/reporting requirements. These conditions are consistent with the NO_X RACT requirements specified in Subchapter 19 and conform to EPA NO_X RACT guidance. More specifically, EPA proposes to conditionally approve the current Conditions of Approval document which includes a source-specific emission limitation of 207 pounds of NO_X per hour for the unit, based on improved absorption and process control. Please note there may be other requirements, such as adequate monitoring, which States and sources will need to provide for, through the Title V permitting process.

New Jersey's SIP Revision

What are New Jersey's NO_X RACT Requirements?

On November 15, 1993, New Jersey submitted to EPA, as a revision to the SIP, subchapter 19 of chapter 27, title 7 of the New Jersey Administrative Code. Subchapter 19 is entitled "Control and Prohibition of Air Pollution From Oxides of Nitrogen.'' This subchapter provides the NO_X RACT requirements

for New Jersey and was effective on December 20, 1993. New Jersey submitted subchapter 19 to EPA, as a revision to the SIP, on November 15, 1993, and on January 27, 1997, the EPA final approval action on subchapter 19 was published in the **Federal Register** (62 FR 3804).

On March 24, 1995, New Jersey adopted amendments to subchapter 19 and submitted them to EPA for approval as a SIP revision on June 21, 1996. On March 29, 1999, the EPA final approval action on the revised subchapter 19 was published in the **Federal Register** (64 FR 14832).

What Are New Jersey's Facility-Specific NO_X RACT Requirements?

Section 19.13 of New Jersey's regulation establishes a procedure for a case-by-case determination of what represents RACT for a particular major facility, item of equipment or source operation. This procedure applies to facilities considered major for NO_X which are in one of the following two situations: (1) Except for non-utility boilers, if the NO_X facility contains any source operation or item of equipment of a category not listed in section 19.2 which has the potential to emit more than 10 tons of NO_X per year, or (2) if the owner or operator of a source operation or item of equipment of a category listed in section 19.2 seeks approval of an alternative maximum allowable emission rate. Today's proposal relates to a facility in the first type of situation discussed above.

New Jersey's procedure requires either submission of a NO_X control plan if specific emission limitations do not apply to the specific source, or submission of a request for an alternative maximum allowable emission rate if specific emission limitations do apply to the specific source. In either case, the owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. Also, in either case, subchapter 19 requires that New Jersey establish emission limits which rely on a RACT determination specific to the facility. The resulting NO_X control plan or alternate maximum allowable emission rate must be submitted to EPA for approval as a SIP revision.

When Was New Jersey's RACT Determination Proposed and Adopted?

New Jersey's RACT determination was first proposed on February 15, 1995, with a public comment period ending March 15, 1995. New Jersey adopted the RACT determination on February 15, 1996. New Jersey modified Repauno's RACT determination several other times, after other public notices and public comment periods. New Jersey adopted the last RACT determination on July 1, 1999.

When Was New Jersey's SIP Revision Submitted to EPA?

New Jersey's SIP revision was modified several times between 1995 and 1999. New Jersey submitted SIP revisions to EPA on June 18, 1996, January 21, 1998, and July 1, 1999. EPA determined each submittal administratively and technically complete. Today's proposal is based on the July 1, 1999, SIP revision, as supplemented on September 12, 2002, September 26, 2002, April 3, 2003, and May 8, 2003.

General Information

How Can I Get Copies of This Document and Other Related Information?

The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under Region 2 Docket Number NJ61–260. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency: New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625.

Electronic Access. You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

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 rulemaking identification number by including the text "Public comment on proposed rulemaking [Region 2 Docket Number NJ61–260]'' 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.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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.

E-mail. Comments may be sent by electronic mail (e-mail) to *Werner.Raymond@epa.gov*; please include the text "Public comment on proposed rulemaking [Region 2 Docket Number NJ61–260]'' in the subject line. EPA's e-mail system is not an "anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, 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.

Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE'', and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Please include the text "Public comment on proposed rulemaking [Region 2 Docket Number NJ61–260]'' in the subject line on the first page of your comment.

By Hand Delivery or Courier. Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Conclusion

EPA is proposing to conditionally approve the New Jersey SIP revision for a source-specific RACT determination for Repauno's sodium nitrite manufacturing plant. This SIP revision contains source-specific NO_X emission limitations for Repauno. EPA is proposing conditional approval of New Jersey's SIP revision, provided New Jersey commits in writing, on or before May 7, 2004, to correct the deficiencies discussed in the "What Are EPA's Proposed Conditions for Approval?'' section. New Jersey must then correct the deficiencies and submit them to EPA as a SIP revision within one year of EPA's final action on this SIP revision.

If New Jersey submits a commitment to this effect in writing, on or before May 7, 2004, EPA will publish a final conditional approval of New Jersey's SIP revision. EPA will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the SIP submittal. If New Jersey does not make the required commitment to EPA, EPA is proposing, in the alternative, to disapprove the SIP revision.

EPA is requesting public comment on the issues discussed in today's action. EPA will consider all public comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to the EPA Regional office listed in the **ADDRESSES** section.

Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: March 29, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 04–7863 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0189; FRL–7643–8]

RIN 2060–AK73

National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend the list of categories of sources that was developed pursuant to section 112(c)(1) of the Clean Air Act (CAA) by deleting four subcategories from the Stationary Combustion Turbines source category. Final maximum achievable control technology (MACT) standards creating the following subcategories were published on March 5, 2004: lean premix gas-fired stationary combustion turbines, diffusion flame gas-fired stationary combustion turbines, emergency stationary combustion turbines, and stationary combustion turbines located on the North Slope of Alaska. This action is being taken in part to respond to a petition submitted by the Gas Turbine Association (GTA) and in part upon the EPA Administrator's own motion. Petitions to remove a source category from the source category list are permitted under section 112(c)(9) of the CAA. The proposed rule is based on EPA's evaluation of available information concerning the potential hazards from exposure to hazardous air pollutants (HAP) emitted from the four subcategories and includes a detailed rationale for removing the subcategories from the source category list. We request comment on the proposed rule.

Although the proposed rule would delete certain subcategories from the Stationary Combustion Turbines source category, the MACT standards for the subcategories will take effect upon publication of the standards. Because the MACT standards require immediate compliance by new sources, some sources in the subcategories which we are proposing to delist may need to make immediate expenditures on emission controls which will not be required if we adopt a final rule to delete the subcategories. In view of our initial determination that the statutory criteria for delisting have been met for the subcategories, we consider it inappropriate and contrary to statutory intent to mandate such expenditures until after a final determination has been made whether or not the subcategories should be delisted. Accordingly, we are publishing elsewhere in this **Federal Register** a proposal to stay the effectiveness of the MACT standards for new sources in the subcategories during the pendency of the rule to delete the subcategories.

DATES: *Comments.* Written comments on the proposed rule must be received by June 7, 2004.

Public Hearing. A public hearing regarding the proposed rule will be held if requests to speak are received by the EPA on or before April 22, 2004. If requested, a public hearing will be held on May 5, 2004.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, or through hand delivery/courier. Electronic comments may be submitted on-line at *http://www.epa.gov/edocket/.* Written comments sent by U.S. mail should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket ID Number OAR–2003–0189, Room B108, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Written comments delivered in person or by courier should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket ID Number OAR–2003–0189, Room B102, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is requested by April 22, 2004 the public hearing will be held at the EPA facility complex, T.W. Alexander Drive, Research Triangle Park, NC May 5, 2004. Persons interested in presenting oral testimony should contact Ms. Kelly A. Rimer, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2962. Persons interested in attending the public hearing should also contact Ms. Rimer to verify the time of the hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly A. Rimer, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2962, electronic mail address *rimer.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Any industry using a combustion turbine as defined in the regulation.	4911	2211	Electric power generation, transmission, or stationary distribution.
	4922	486210	Natural gas transmission.
	1311	211111	Crude petroleum and natural gas production.
	1321	211112	Natural gas liquids producers.
	4931	221	Electric and other services combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID Number OAR–2003–0189. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20004. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked "late.'' The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search'' and key in Docket ID No. OAR–2003–0189. The system is an "anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2003–0189. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: EPA Docket Center (Air Docket), U.S. EPA West, (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2003–0189.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2003–0189. Such deliveries are only accepted during the Docket Center's normal hours of operation.

By Facsimile. Fax your comments to: (202) 566–1741, Docket ID No. OAR–2003–0189.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Kelly Rimer, c/o Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27709, Attention Docket ID No. OAR–2003–0189. 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 identified in the **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline. This preamble is organized as follows:

I. Background and Criteria for Delisting
II. Summary of Petitioner's Request and EPA's Initial Delisting Determination
III. Description of the Four Stationary Combustion Turbine Subcategories
IV. Analysis of Gas-Fired Subcategories
A. Analytical Approach
B. Planning and Scoping
C. Source Characterization
D. Emissions Characterization
E. Air Dispersion Modeling
F. Human Health Effects of Emitted HAP
G. Human Health Values Used
H. Human Health Risk Results—Air Pathway
I. Multipathway Considerations
J. Effects Due to Acute Exposure
K. Environmental Effects Evaluation
V. Analysis of the Emergency Turbine Subcategory
VI. Analysis of the North Slope Turbine Subcategory
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
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C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. Background and Criteria for Delisting

Section 112 of the CAA contains a mandate for EPA to evaluate and control emissions of HAP from industry sectors called source categories. Section 112(b)(1) includes a list of 188 specific chemical compounds and classes of compounds identified as HAP. Section 112(c) requires the EPA to publish a list of all categories and subcategories of sources of HAP which will be subject to regulation. Each category or subcategory which includes major sources of HAP must be listed for regulation. Under section 112(d), the CAA requires EPA to establish national emission standards for major source categories based on MACT for each category or subcategory which is included in the list.

The EPA published the initial source category list in the **Federal Register** on July 16, 1992 (57 FR 31576); you can find the most recent update to the source category list in the February 12, 2002 **Federal Register** (67 FR 6521).

Section 112(c)(9) of the CAA provides for the deletion of a source category from the list of source categories. A source category may be deleted from the list under section 112(c)(9)(A) if the category no longer satisfies the criteria for inclusion on the list because of the deletion of one or more HAP from the HAP list pursuant to section 112(b)(3) or a source category may be deleted from the list under section 112(c)(9)(B) if certain substantive criteria are satisfied. The EPA construes these provisions to apply to each listed subcategory as well. This construction is logical in the context of the general regulatory scheme established by the statute and is the most reasonable one because section 112(c)(9)(B)(ii) expressly refers to subcategories. If EPA takes final action to delete a listed source category or subcategory, this eliminates any requirement that MACT standards be promulgated for the category or subcategory in question. If MACT standards have already been promulgated, EPA will amend or rescind the standards in question.

A proceeding to delete a listed category or subcategory under section 112(c)(9)(B) of the CAA may be commenced either in response to a petition or on the initiative of the EPA Administrator. A source category delist petition is a formal request to the EPA from an individual or group to remove a specific source category or subcategory from the source category list. The Administrator must either grant or deny a petition within 1 year after receiving a complete petition (64 FR 33453). To grant such a petition, or to commence a proceeding to delete a category or subcategory on the Administrator's own motion, the Administrator must make an initial determination that:

(1) In the case of HAP emitted by sources in the category or subcategory that may result in cancer in humans, a determination that no source in the category or subcategory emits such HAP in quantities that may cause a lifetime risk of cancer greater than 1 in 1 million to the individual in the population who is most exposed to emissions of such HAP from the source;

(2) In the case of HAP that may result in adverse health effects in humans other than cancer, a determination that emissions from no source in the category or subcategory exceed a level which is adequate to protect public health with an ample margin of safety; and

(3) In the case of HAP that may result in adverse environmental effects, a determination that no adverse environmental effect will result from emissions from any source in the category or subcategory.

If the Administrator decides to deny a petition, the Agency publishes a written explanation of the basis for denial in the **Federal Register**. A decision to deny a petition is final Agency action subject to review. If the Administrator decides to grant a petition, the Agency publishes a written explanation of the Administrator's decision, along with a proposed rule to delete the affected source category or subcategory. After affording an opportunity for notice and comment, the Administrator will issue a final rule determining whether or not the affected category or subcategory will be delisted. If the final rule delists any affected source category or subcategory, the Administrator will also take all necessary actions to revise the source category list and to amend or to rescind affected MACT standards.

We do not interpret section 112(c)(9)(B) of the CAA to require absolute certainty that a source category or subcategory will not cause adverse effects on human health or the environment before it may be deleted from the source category list. The use of the words ''may'' and ''adequate'' indicate that the Agency must weigh the potential uncertainties and their likely significance. Uncertainties concerning risks of adverse health or environmental effects may be mitigated if we can determine that projected exposures are sufficiently low to provide reasonable assurance that such adverse effects will

not occur. Similarly, uncertainties concerning the magnitude of projected exposures may be mitigated if we can determine that the levels which might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels.

II. Summary of Petitioner's Request and EPA's Initial Delisting Determination

On August 28, 2002, the GTA submitted a petition requesting EPA to create and then delete two subcategories from the Stationary Combustion Turbines source category: lean premix stationary combustion turbines firing natural gas as a primary fuel with limited oil backup capability, and a low-risk subcategory of stationary combustion turbines.

Upon receiving a source category or subcategory deletion petition, EPA must first determine whether there is a match between the source category or subcategory to which the petition applies and a listed category or subcategory. When MACT standards have been promulgated for the category in question, EPA will consult the definitions in those standards to determine whether or not a petition refers to a listed category or subcategory.

In this case, neither of the two subcategories to which the petition refers existed at the time the petition was received, nor do they coincide with the subcategories which we have recently adopted in the final MACT standards for stationary combustion turbines. However, based on the information and the arguments presented in the petition, we decided to conduct our own analysis on the subcategories as they were defined in the final MACT standards to determine whether any of the subcategories meet the criteria of section 112(c)(9)(B) of the CAA. In the analysis on which our initial determinations are based, we used the data and analysis presented in the petition in those instances where we felt it was relevant and technically appropriate to do so, and we collected additional data and performed further analysis where those in the petition were considered inadequate.

We construe the issuance of the proposed rule to constitute a partial grant and a partial denial of the GTA petition. The lean premix gas-fired turbines subcategory in the final MACT standards is similar to one of the subcategories that the petitioner proposed: Namely, the lean premix stationary combustion turbine firing natural gas as a primary fuel with limited oil use. We have made an initial determination that the substantive criteria for delisting are satisfied for this subcategory. However, in the final MACT standards, we did not create any subcategory coinciding with the low-risk subcategory proposed by the petitioner. Therefore, we must deny that portion of the petition. Also, we have made an initial determination that several additional subcategories included in the final MACT standards satisfy the substantive criteria for delisting. These additional subcategories are: diffusion flame gas-fired stationary turbines, emergency stationary combustion turbines, and stationary combustion turbines located on the North Slope of Alaska.

III. Description of the Four Stationary Combustion Turbines Subcategories

The final MACT standards (40 CFR 63.6175) define stationary combustion turbines as:

> All equipment including, but not limited to, the turbine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any regenerative/recuperative cycle stationary combustion turbine, or the combustion turbine portion of any stationary combined cycle steam/electric generating system. Stationary means that the combustion turbine is not self-propelled or intended to be propelled while performing its function. A stationary combustion turbine may, however, be mounted on a vehicle for portability or transportability.

Currently, there are approximately 8,000 stationary combustion turbines operating in the United States.

For the purposes of the MACT standards, stationary combustion turbines have been divided into eight subcategories. Four of the subcategories are the subject of the proposed delisting rule: (1) Stationary lean premix combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than 1,000 hours annually (also referred to as "lean premix gas-fired turbines''); (2) stationary diffusion flame combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than 1,000 hours annually (also referred to herein as "diffusion flame gas-fired turbines''); (3) emergency stationary combustion turbines; and (4) stationary combustion turbines operated on the North Slope of Alaska (defined as the area north of the Arctic Circle (latitude 66.5° North)).

The stationary combustion turbines MACT standards also define the subcategories. The lean premix gas-fired turbines subcategory includes those stationary combustion turbines that use lean premix technology which was introduced in the 1990's and was developed to reduce nitrogen oxide (NO_X) emissions without the use of add-on controls. In a lean premix combustor, the air and fuel are thoroughly mixed to form a lean mixture for combustion. Mixing may occur before or in the combustion chamber. Lean premix combustors emit lower levels of NO_X, carbon monoxide (CO), formaldehyde and other HAP than diffusion flame combustion turbines.

Diffusion flame gas-fired turbines operate in a different manner than lean premix units. In a diffusion flame combustor, the fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition.

Emergency stationary combustion turbines are stationary combustion turbines that operate in an emergency situation. Examples include stationary combustion turbines used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility is interrupted, or stationary combustion turbines used to pump water in the case of fire or flood, etc. Emergency stationary combustion turbines do not include stationary combustion turbines used as peaking units at electric utilities or stationary combustion turbines at industrial facilities that typically operate at low capacity factors. Emergency stationary combustion turbines may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are required by the manufacturer, the vendor, or the insurance company associated with the turbine.

The subcategory stationary combustion turbines located on the North Slope of Alaska refers to all stationary combustion turbines that are located north of the Arctic Circle. They have been identified as a subcategory due to operating limitations and uncertainties regarding the application of controls to these units.

IV. Analysis of Gas-Fired Subcategories

A. Analytical Approach

In conducting the risk assessment for the four source subcategories, EPA uses a tiered, iterative process recommended by the National Research Council (NRC) of the National Academy of Sciences. This process begins with the use of relatively inexpensive screening techniques and moves to more resource-intensive levels of data-gathering, model construction, and model application, as the particular situation warrants (NRC, 1994). In applying this approach, EPA

typically conducts the first (and in some cases the only) iteration of the risk assessment using limited amounts of data and simple, health-protective assumptions. This results in risk estimates that we expect will over-predict the actual risk. If the initial estimates of risk exceed a level of concern, then successive refinements with regard to data and models may be useful to more accurately characterize the actual risk. If the initial estimates are below a level of concern, then a more sophisticated analysis may not be necessary for decision-making purposes.

The analysis discussed here represents an initial assessment based on simple, health-protective assumptions. This screening approach has not sought to modify the assumptions in a way that would yield exposure estimates that would correspond to an actual individual in the population who is most exposed. Instead, through the compounding of health-protective assumptions, we feel this approach yields exposure estimates that exceed exposures to the most exposed individuals in the population.

B. Planning and Scoping

The first step in conducting a tiered, iterative risk assessment is to plan and scope the assessment. The EPA provides guidance for this step in the Risk Characterization Handbook (EPA, 2000) and in the Framework for Cumulative Risk Assessment (EPA, 2003). The general process of planning and scoping includes defining the elements that will or will not be included in the risk assessment and explaining the purposes for which the risk assessment information will be used (EPA, 2000).

We have already established the motivation for conducting the risk assessment. Prompted by a petition submitted by the GTA, we conducted the assessment under section 112(c)(9)(B) of the CAA to determine whether regulatory relief for the industry was warranted. The assessment needed to show whether or not any source in each of the four subcategories exceeds the human health and ecological criteria described in the statute. In designing the assessment, we considered the statutory requirements, the amount and type of available information on the subcategories to include in the assessment, and the available methods and models.

Based on the criteria, we designed an assessment to estimate cancer risks and noncancer hazards from a worst-case exposure scenario which would likely exceed the exposure to the person most exposed. We began by conducting a human health risk analysis on stationary lean premix combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than 1,000 hours annually, and stationary diffusion flame combustion turbines when firing gas and when firing oil at sites where all turbines fire oil no more than 1,000 hours annually. To evaluate the risks, hazards and potential for adverse environmental effects from the emergency turbines and north slope turbines subcategories, we used available information on the subcategories and the results of the assessment on the lean premix and diffusion flame subcategories.

We designed the assessment to address cancer risks and noncancer hazards to humans from the air and ingestion pathways and also evaluated the potential for adverse environmental effects. As we describe above, we used a tiered, iterative approach to the assessment. Given that there are thousands of facilities in the four subcategories and that current information on the facilities is limited, it was not feasible to identify all turbines and their operating characteristics on a site-specific basis. Therefore, we used a number of health-protective assumptions where we lacked data. This is an appropriate approach to evaluating whether to remove a source category or subcategory from regulation as the CAA specifies that in order to be delisted, "no source in the category'' may exceed the cancer, noncancer or environmental criteria.

We created a worst-case exposure scenario by using a combination of actual data and health-protective assumptions. For the air pathway, our approach was to:

(1) Determine which type of turbine would result in the highest modeled air concentration of HAP.

(2) Hypothetically "place'' eleven of the turbines at an actual facility to create our model plant. (An actual facility is permitted for eleven turbines, but seven turbines are currently operated there.)

(3) Calculate cancer risks, noncancer hazards and the potential for adverse environmental effects based on the highest ambient air concentrations of HAP calculated by the model.

For the multipathway analysis, we developed and evaluated an exposure scenario for our model plant using meteorologic data from locations around the country: Allentown, PA; Baton Rouge, LA; Indianapolis, IN; Kansas City, KS; Los Angeles, CA; Minneapolis, MN; Seattle, WA; and Tampa, FL. Our goal was to account for the effect of meteorologic variability on the risks and hazards.

We feel the health-protective assumptions we used, when compounded in the assessment, lead to very health-protective risk estimates. Given the combination of data and assumptions used, we conducted an assessment that adequately addresses the questions posed, that is responsive to the requirements in section 112(c)(9)(B) of the CAA, that overestimates actual risks, and that shows the statutory criteria for deletion are met. See the technical memo located in the docket for the a more detailed description of the analysis (Combustion Turbines Source Category Risk Characterization, January 2004).

C. Source Characterization

Stationary combustion turbines can be operated in two basic cycles: simple cycle and combined cycle. The simple cycle mode consists of the combustion turbine-generator combination operating and producing electricity with the turbine exhaust vented through a stack directly to the atmosphere. In the combined cycle mode, the exhaust from the turbine is passed through a heat recovery steam generator to generate steam that is then used to produce additional electricity. The heat extraction at this step cools the exhaust gas stream resulting in a lower exhaust temperature (reduced plume buoyancy). Thus, emissions from a turbine operating in the combined cycle mode will often produce higher ground level pollutant concentrations. As a health-protective assumption, our analysis only examined the combined cycle units.

To conduct our analysis, we used information on the physical characteristics of these turbines that was submitted by the petitioner after we determined the data were of sufficient quality to do so. The GTA provided data on a set of typical turbines ranging in power output from 5 to 253 megawatts (MW) each. These characteristics include turbine type (*i.e.*, make and model), heat input, stack parameters (height, diameter, exit velocity, temperature), and building dimensions.

D. Emissions Characterization

With regard to emissions, we agree with the petitioner that the following HAP are emitted from turbines when natural gas is used as the fuel: 1,3-butadiene, acetaldehyde, acrolein, benzene, ethylbenzene, formaldehyde, naphthalene, polycyclic aromatic hydrocarbons (PAH, which the EPA classifies as a subset of a larger group of HAP, polycyclic organic matter (POM)), propylene oxide, toluene, and xylenes (mixed). We also agree with the petitioner that the following non-

metallic HAP are emitted from turbines when distillate oil is used as the fuel: 1,3-butadiene, benzene, formaldehyde, naphthalene, and PAH. However, the petitioner claimed that metallic HAP are not detectable in distillate oil and are, thus, not present in turbine emissions; they subsequently amended this claim to state that only chromium and lead are emitted. We disagree with these claims and have collected additional data showing the following HAP metals can be emitted when turbines burn distillate oil, although the levels can vary by oil type: arsenic, beryllium, cadmium, chromium VI, lead, manganese, mercury, nickel and selenium. We used emission factors for the emitted HAP that are based on the most recent available data. Also, we developed separate emission factors for large and small turbines based on the burner design-type (lean premix or diffusion flame) and based on the differences in heat input between small versus large turbines. To develop health-protective, yet still realistic emission values, we calculated emission factors for each HAP by selecting the lesser of (1) the upper 95 percent confidence interval around the mean of each set of emission factors reported for the HAP or (2) the maximum emission factor reported for the HAP. We then developed turbine-specific emission estimates by multiplying the pollutant-specific emission factors with the heat input of each unit.

E. Air Dispersion Modeling

The goal of our air dispersion modeling approach was to determine the maximum annual ambient average concentrations of all emitted HAP that a person living in the vicinity of a turbine could experience. We used these maximum annual ambient average concentrations, without regard to whether a person is actually exposed to these concentrations, as surrogates for exposure. This is a health-protective approach to assessing exposure.

We used the SCREEN3 model (Version 96043) to estimate the maximum annual ambient average concentrations of all emitted pollutants. SCREEN3 consists of algorithms that tend to overestimate HAP concentrations in air, along with worst-case meteorologic conditions, to estimate ambient concentrations of HAP in air. This results in estimates of HAP concentrations in air that are likely to be an overestimate of what we expect people to actually breathe. We used this health-protective modeling approach to evaluate the four subcategories of stationary combustion turbines because it is not feasible to identify all turbines and their operating characteristics due to the large number of facilities. Also, we want to ensure that our assessment is not underestimating potential exposures and risks. This is an important consideration when we are evaluating whether to grant a petition to remove a source category from regulation as the CAA specifies that in order to be delisted, ''no source in the category'' may exceed the cancer, noncancer or environmental criteria.

Our approach to modeling was to first determine which type of turbine (of the ten turbine types identified by the petitioner) produces the highest maximum annual ambient average concentrations using SCREEN3. We then simulated a facility and ran SCREEN3 for all HAP emitted from lean premix gas-fired turbines and also for diffusion flame gas-fired turbines, using regulatory default mode, full meteorology, building downwash, flat nearby terrain, rural dispersion, automated receptor arrangement (50–2000 meter), and a conversion factor of 0.08 to obtain annual average concentrations from maximum 1-hour concentrations. As stated above, we used turbine characteristics submitted by the petitioner and developed updated emission factors ourselves. We used these data as inputs into the SCREEN3 model in order to obtain the maximum annual average air concentrations from a worst-case type of turbine. Our dispersion modeling showed that the W501F turbine resulted in the highest air concentrations.

After establishing that maximum annual ambient average concentrations are the highest from the W501F turbine, we simulated another facility. We placed 11 W501F turbines at our simulated facility because the highest number of large turbines permitted to operate at an actual facility is 11. After accounting for source separation (*see* technical memo for details), we ran SCREEN3 on our simulated facility for four scenarios: (1) Assuming the 11 turbines are lean premix gas-fired turbines collectively using 1,000 hours of oil per year; (2) assuming the 11 turbines are diffusion flame gas-fired turbines collectively using 1,000 hours of oil per year; (3) assuming the 11 turbines are lean premix and burn only natural gas; and (4) assuming the 11 turbines are diffusion flame turbines and burn only natural gas. We conducted the analyses assuming the turbines burn only natural gas, and assuming the turbines burn natural gas plus 1,000 hours of oil per year because not all facilities use oil, and because emissions are different when only natural gas is used as fuel (no metals are emitted but formaldehyde emissions are higher). The maximum annual ambient average concentrations for each emitted pollutant for natural gas plus 1,000 hours of oil per year and for natural gas only for the 11 W501F turbines can be found in Table 4 of the technical memo (*see* docket).

We consider the maximum annual average concentrations resulting from our dispersion modeling analysis to be health-protective. That is, we feel that the resulting air concentrations over- rather than under-estimate actual exposures to people. This is because our analysis used health-protective source parameters and atmospheric dispersion modeling methodology; relied on health-protective emission factors for all HAP; used the maximum annual ambient average concentrations of the emitted HAP as a surrogate for exposure; and assumed 70 years, 24 hours a day, 365 days a year of continuous exposure. Even though actual emission rates, and thus ambient concentrations, of HAP may increase above annual average levels during certain short-duration transient operations such as unit startup, the health-protective analysis approach accounts for such transient increases in the health-protective estimates of annual average exposures. Thus, the analyses, even though they do not explicitly incorporate these short term events, reasonably account for these events and result in health-protective estimates of risk.

F. Human Health Effects of Emitted HAP

Although numerous HAP may be emitted from combustion turbines, a few account for essentially all the mass of HAP emissions from stationary combustion turbines. These HAP are formaldehyde, toluene, benzene, and acetaldehyde. Other emitted HAP are of potential concern not so much because of the emitted amounts, but due to their high potency via the inhalation route. These include arsenic and PAH. Four of the emitted HAP are of potential concern from the ingestion route: PAH, which are of concern for cancer; and cadmium, lead and mercury which are of concern for noncarcinogenic effects.

The HAP emitted in the largest quantity is formaldehyde. Formaldehyde is a probable human carcinogen and can cause irritation of the eyes and respiratory tract, coughing, dry throat, tightening of the chest, headache, and heart palpitations. Acute (short-term) inhalation has caused bronchitis, pulmonary edema, pneumonitis, pneumonia, and death due to respiratory failure. Chronic (long-

term) exposure can cause dermatitis and sensitization of the skin and respiratory tract.

Other HAP emitted in significant quantities from stationary combustion turbines include toluene, benzene, and acetaldehyde. The health effect of primary concern for toluene is dysfunction of the central nervous system (CNS). Toluene vapor also causes narcosis. Controlled exposure of human subjects produced mild fatigue, weakness, confusion, lacrimation, and paresthesia; at higher exposure levels there were also euphoria, headache, dizziness, dilated pupils, and nausea. After-effects included nervousness, muscular fatigue, and insomnia persisting for several days. Acute exposure may cause irritation of the eyes, respiratory tract, and skin. It may also cause fatigue, weakness, confusion, headache, and drowsiness. Very high concentrations may cause unconsciousness and death.

Benzene is a known human carcinogen. The health effects of benzene include nerve inflammation, CNS depression, and cardiac sensitization. Acute exposure can cause dizziness, euphoria, giddiness, headache, nausea, staggering gait, weakness, drowsiness, respiratory irritation, pulmonary edema, pneumonia, gastrointestinal irritation, convulsions, and paralysis. Benzene can also cause irritation to the skin, eyes, and mucous membranes. Chronic exposure to benzene can cause fatigue, nervousness, irritability, blurred vision, and labored breathing and has produced anorexia and irreversible injury to the blood-forming organs; effects include aplastic anemia and leukemia.

Acetaldehyde is a probable human carcinogen. Inhalation exposures to acetaldehyde can cause irritation of the eyes, mucous membranes, skin, and upper respiratory tract, and CNS depression in humans. Acute exposure can cause conjunctivitis, coughing, difficult breathing, and dermatitis. Chronic exposure may cause heart and kidney damage, embryotoxicity, and teratogenic effects.

Arsenic, a naturally occurring element, is found throughout the environment. For most people, food is the major source of exposure to arsenic. The EPA has classified inorganic arsenic as a human carcinogen. Acute high-level inhalation exposure to arsenic dust or fumes has resulted in gastrointestinal effects (nausea, diarrhea, abdominal pain); central and peripheral nervous system disorders have occurred in workers acutely exposed to inorganic arsenic. Chronic inhalation exposure to inorganic arsenic in humans is associated with irritation of the skin and mucous membranes. Chronic oral exposure has resulted in gastrointestinal effects, anemia, peripheral neuropathy, skin lesions, hyperpigmentation, and liver or kidney damage in humans. Inorganic arsenic exposure in humans, by the inhalation route, has been shown to be strongly associated with lung cancer, while ingestion of inorganic arsenic in humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer.

Polycyclic aromatic hydrocarbons are a group of compounds that fit within the POM HAP category. Dermal exposures to mixtures of PAH cause skin disorders in humans and animals. No information is available on the reproductive or developmental effects of PAH mixtures in humans, but animal studies have reported that oral exposure to benzo(a)pyrene (BaP, a PAH compound) causes reproductive and developmental effects. Human studies have reported an increase in lung cancer in humans exposed to PAH-bearing mixtures including coke oven emissions, roofing tar emissions, and cigarette smoke. Animal studies have reported respiratory tract tumors from inhalation exposure to BaP and forestomach tumors, leukemia, and lung tumors from oral exposure to BaP. The EPA has classified seven PAH compounds: (BaP, benz(a)anthracene, chrysene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, and indeno(1,2,3-cd)pyrene) as Group B2, probable human carcinogens.

The EPA reports in the Integrated Risk and Exposure Assessment (IRIS) that cadmium has been shown to cause kidney damage via the oral route. IRIS also reports that there are no positive cancer studies of orally ingested cadmium suitable for quantification. Consequently, we evaluated noncancer hazards only for cadmium ingestion. The major effect from chronic oral exposure to inorganic mercury is also kidney damage. Animal studies have reported effects such as alterations in testicular tissue, increased resorption rates, and abnormalities of development from oral exposure to inorganic mercury. Mercuric chloride (an inorganic mercury compound) exposure has been shown to result in forestomach, thyroid, and renal tumors in experimental animals. For lead, oral exposures can lead to central nervous system effects, as well as effects on the blood, blood pressure, kidneys and Vitamin D metabolism. Children are especially sensitive to the chronic effects of lead, and can exhibit slowed cognitive development and reduced growth.

G. Human Health Values Used

We used the human health values currently used by EPA's air toxics program and available at: *http://www.epa.gov/ttn/atw/toxsource/summary.html.* These dose response values come from several sources including EPA's IRIS, the United States Department of Health and Human Service's Agency for Toxic Substances Disease Registry, and California EPA. See Table 5 in our technical memo for a summary of the human health values we used in our assessment.

For formaldehyde, we do not use the dose-response value reported in IRIS. The dose-response value in IRIS is based on a 1987 study, and no longer represents the best available science in the peer-reviewed literature. Since that time, significant new data and analysis have become available. We based the dose-response value we used for formaldehyde on work conducted by the CIIT Centers for Health Research (CIIT). In 1999, the CIIT published a risk assessment which incorporated mechanistic and dosimetric information on formaldehyde that had been accumulated over the past decade. The risk assessment analyzed carcinogenic risk from inhaled formaldehyde using approaches that are consistent with EPA's draft guidelines for carcinogenic risk assessment. The CIIT model is based on computational fluid dynamics (CFD) models of airflow and formaldehyde delivery to the relevant parts of the rat and human respiratory tract, which are then coupled to a biologically-motivated, two-staged clonal growth model that allows for incorporation of different biological effects. These biological effects, such as interaction with DNA and cell proliferation, are processes by which formaldehyde may contribute to development of cancer at sites exposed at the portal of entry (*e.g.*, respiratory tract). The two-staged model is a much more advanced approach for examining the relevance of tumors seen in animal models for human populations. The CIIT information and other recent information, including recently published epidemiological studies, are being reviewed and considered in the reassessment of our formaldehyde unit risk estimate (URE).

We believe that the CIIT modeling effort represents the best available application of the available mechanistic and dosimetric science on the dose-response for portal of entry cancers due to formaldehyde exposures. We note here that other organizations, including

Health Canada, have adopted this approach. Accordingly, we have used risk estimates based on the CIIT airflow model coupled to a two-staged clonal growth model as the basis for the dose-response values for this analysis. The formaldehyde risk value obtained by extrapolating with the CIIT model that we used in our analysis differs slightly from the values used by the petitioner. The CIIT model incorporates state-of-the-art analyses for species-specific dosimetry, and encompasses more of the available biological data than any other currently available model. As with any model, uncertainties exist, and the CIIT model is sensitive to the inputs, but we believe it represents the best available approach for assessing the risk of portal-of-entry cancers due to formaldehyde exposures.

H. Human Health Risk Results—Air Pathway

We calculated the maximum excess lifetime cancer risk for the Air pathway that results from the exposure scenario described above. We estimated risks for both the primary firing of natural gas with 1,000 hours of oil firing per year, per facility, and for the continuous firing of natural gas. Diffusion flame gas-fired turbines produced the highest risk. When firing natural gas plus 1,000 hours of oil per year, the total excess lifetime cancer risk from all the emitted pollutants from the diffusion flame turbines in our analysis is 7.7×10^{-7}. The total excess lifetime cancer risk from continuous burning of natural gas for our modeled scenario is 3.9×10^{-7}.

In addition to estimating cancer risks, we evaluated noncancer hazards for each pollutant for which there is a noncancer human health value. To do this, we used a hazard quotient (HQ) approach and calculated the ratio of the exposure concentration to the noncancer human health value (*e.g.*, inhalation reference concentration (RfC)) for each emitted HAP. This is represented by the formula HQ= (exposure concentration)/(RfC). The RfC is a peer-reviewed value defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily inhalation exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious noncancer effects during a lifetime.

We then generated hazard indices (HI) by summing HQ across HAP. We can generate two types of hazard indices. The first type is generated by adding HQ for all emitted HAP regardless of their target organ. This results in an HI that is considered health-protective since the HQ for all pollutants are added even though some pollutants cause distinctly different effects. For our modeled scenario, the total HI for the natural gas plus 1,000 hours of oil scenario is 0.6. The HI for the natural gas burning scenario is 0.4.

We can also calculate HI by summing HQ from HAP that affect the same target organ. In this assessment, pollutants that affect the same target organ are acrolein and formaldehyde; they affect the respiratory system. These also are the two HAP with the highest individual hazard quotients. When accounting for the fact that acrolein and formaldehyde affect the same target organ, we calculate a HI of 0.4. None of the other HAP affect the same target organ, thus, we calculated a HI for the respiratory system only. The other HAP had HQ ranging from 10^{-6} (nickel) to 0.1 (manganese).

I. Multipathway Considerations

In order to fully characterize risks and hazards to humans from the subcategories, we considered exposures from ingestion as well as inhalation for four of the emitted HAP: cadmium, lead, mercury and PAH. We chose these HAP because of all the HAP emitted, only these four appear on lists of chemicals that EPA considers to be persistent, bioaccumulative, and toxic (PBT) substances under the Pollution Prevention Program, the Great Waters Program, or the Toxics Release Inventory. (*See* the multipathway HAP memo in the docket for more information.) Therefore, in addressing the potential for the subcategories to be of concern due to multipathway routes of exposure, we need to consider emissions of cadmium, lead, mercury and PAH.

Several of the emitted PAH are carcinogenic via the ingestion pathway and, thus, we evaluated these pollutants in the multipathway analysis: benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, and indeno (1,2,3-cd)pyrene. We evaluated noncancer health effects for cadmium, lead, mercury and the following noncarcinogenic PAH: Acenaphthene, fluoranthene, fluorene, and pyrene.

To evaluate the potential for these HAP to cause cancer risk or noncancer hazard to humans due to ingestion, we conducted a screening level multipathway analysis. As with the inhalation assessment, we did not have enough data to evaluate actual exposures across the entire source category. We did not structure this assessment to reflect actual exposures, rather we developed a worst-case exposure model scenario based on limited data and assumptions which, when considered in total, provide for a health-protective analysis. This approach ensures that we are not underestimating actual risks and hazards from emissions from the four subcategories.

We structured this analysis to estimate maximum risks to an individual exposed via routes other than inhalation (*e.g.*, ingestion of contaminated food) for HAP emitted from combustion turbines. We used our modeled facility and evaluated human ingestion of contaminated food, water and soil. We generally followed the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities (HHRAP) (U.S. EPA, 1998) to conduct the multipathway portion of the assessment. The HHRAP provided the primary source of chemical-specific parameter values and default environmental parameters. We started with the HHRAP's parameter values and replaced specific inputs as necessary, either due to updated science or due to policy choices that we made in order to be consistent with the mandate to assess risks to the individual most exposed.

To evaluate a worst-case potential exposure from our modeled facility, we used a subsistence farmer scenario. This scenario reflects an adult living on a farm that we hypothetically assumed to be located close to our modeled facility. We assumed the farmer consumes meat (pork and beef), dairy, fruit, and vegetables that the farm produces as a portion of his/her diet. The animals raised on the farm subsist primarily on feed grown on the farm. We also assumed that the farmer is a recreational fisher and eats the fish he/she catches. Finally, we assumed that the farmer drinks treated, local surface water (water which has gone through minimal municipal treatment).

For several reasons, we consider this approach to multipathway assessment scenario to be health-protective. We used the maximum ambient air concentrations from our modeled facility which, as we have stated above, produces higher ambient air concentrations than we expect to actually occur anywhere in the U.S. Also, we used a water body size, flow rate, watershed size and other parameters that were developed for the health protective analysis scenario analyzed in the Mercury Study Report to Congress. Further, we applied maximum pollutant deposition rates to the entire watershed. Thus, we feel our modeled scenario will over-predict

actual risks and hazards from ingestion and is, therefore, health-protective.

We estimated both cancer risk and noncancer hazards from all the ingestion pathways: water, meats, fruits, vegetables, soil, and fish. The results of our multipathway analysis show that the cancer risks from PAH are 0.16 in 1 million (1.6×10^{-7}). This is below the statutory cancer risk criterion of 1 in 1 million. When we add these risks to the lifetime excess cancer risks of 7.7×10^{-7} from the inhalation pathway, we get a total cancer risk of .93 in 1 million, which rounds to 0.9 in 1 million (0.9×10^{-6}). Such a summation of risks is appropriate only if it is plausible that the person with the maximum risks from the air pathway is also the person with the maximum risk from the ingestion pathway. Inherent in this assumption is that these two maximum concentrations (therefore, the maximum risk and hazards) occur at the exact same location. While we calculated risk and hazards for such a person, we feel it very unlikely that one person would be located at the point of highest impact from both inhalation and ingestion. If we had more site-specific data with which to conduct this assessment, we would likely have found that the maximum impact from inhalation was not in the same location as the maximum impact from ingestion, and the risks would be lower. We consider it inappropriate to use this combined inhalation/ingestion scenario because we consider it to be implausible. We feel that the actual combined risks, from all pathways, will be lower than 1 in 1 million and, therefore, the statutory criteria are met.

We estimated noncancer hazards for cadmium and mercury, combining hazards from all ingestion pathways. The highest total hazard index for all ingestion pathways is 0.1. Noncancer hazards are driven by methyl mercury via ingestion of fish. The HQ for mercury for this route of exposure is also 0.1; it is clearly the driver for multipathway noncancer effects.

The EPA uses a slightly different approach in order to assess the hazard from ingestion exposures to lead. In general, we use a protocol like that in HHRAP to obtain media concentrations. We use an additional model called the Integrated Exposure, Uptake and Biokinetic Model (IEUBK) to estimate blood lead levels. We then calculate an HQ. In this analysis, the inhalation HQ for lead was so low, 0.000008, that we found it unnecessary to take the additional step of modeling further with the IEUBK. Based on previous analyses we have conducted on lead, we do not feel that an air concentration that leads to an HQ of 0.000008 would translate into an HQ of concern from the ingestion route of exposure. The ingestion HQ would have to be four to five orders of magnitude higher than the HQ from the air pathway to even approach a level of concern. Given the very low inhalation HQ for lead from exposure to the turbine subcategories, the lead emissions from the four subcategories do not exceed a level that is adequate to protect the public health with an ample margin of safety. Therefore, we conclude that both risks and hazards to humans due to multipathway exposures from all HAP emitted from the four combustion turbine subcategories meet the required human health criteria in CAA section 112(c)(9)(B).

Emissions that result in the maximum modeled lifetime excess cancer risk of 0.9 in 1 million are within the statutory criteria. With regard to noncancer effects, we consider the emissions resulting in a target organ-specific HI of 0.4 from the turbine subcategories do not exceed a level that is adequate to protect the public health with an ample margin of safety. We consider the actual risks and hazards from the turbines in the four subcategories to be lower than what we estimated here due to the health-protective assumptions we included in this assessment. For example, in characterizing the physical and operational attributes of the turbines, we assumed all turbines were operating in combined cycle, used worst-case meteorology, and included the potential for building downwash. These assumptions lead to exposures which we feel are higher than what we would find from an actual plant. In addition, we assumed that individuals are exposed to the maximum modeled concentrations of HAP in the air continuously for their entire lives (which we approximated as 70 years), and we used the maximum annual average concentration as a surrogate for exposure. These assumptions are also health-protective.

J. Effects Due to Acute Exposure

We determined that emissions from turbines are of concern for long-term (chronic) exposures and not from short-term (acute) exposures. Short-term exposures may arise when a facility starts up or shuts down equipment, which may result in short bursts of high emissions due to the fact that the unit is not running at peak efficiency during the time it takes to start up or shut down. For other types of source categories, this can lead to exposures that result in adverse health effects. In the case of gas-fired turbines, we have determined that upon start up, they reach peak efficiency quickly, therefore, limiting any bursts of emissions. Shut downs take a short amount of time as well. The HAP emitted from combustion turbines have not been associated with acute health effects at the concentrations predicted in the analyses. While the short-duration emissions may slightly increase the overall cancer risks, this effect would be so small as to be inconsequential. Therefore, we conclude that the acute exposures to HAP emissions from stationary combustion turbines are not of concern.

K. Environmental Effects Evaluation

In order to assess whether the emissions from our modeled facility could lead to adverse environmental effects, we performed a screening-level ecological risk assessment. We evaluated the inhalation pathway for terrestrial mammals, the ingestion pathway for terrestrial wildlife, contact with sediment for benthic species, and contact with soil for terrestrial plants. We did not evaluate terrestrial plants exposed via direct contact with the air due to a lack of toxicity data.

We contend that human toxicity values we used in this analysis for the inhalation route are protective of inhalation exposures that may be experienced by terrestrial mammals. The human health values were derived based on human studies and also considered studies on small laboratory animals, primarily rodents. These values are significantly less than the level to which an experimental animal was exposed. Because the maximum cancer risk and noncancer hazards to humans from inhalation exposure are all below a level of concern, we expect there to be no significant and widespread adverse effects to terrestrial mammals from inhalation exposures to HAP emitted from gas-fired turbines.

In order to assess whether the continuing emissions from our modeled facility could contribute to adverse environmental effects from the ingestion pathway, we performed a screening-level ecological risk assessment. For screening purposes, we intentionally designed the assessment to be health-protective of ecological receptors. We did not intend the assessment to be used in predicting specific types of effects to individuals, species, populations, or communities, or to the structure and function of the ecosystem. We used the assessment to identify HAP which may pose potential risk or hazard to ecological receptors and, therefore, would need to be evaluated in a more refined level of risk assessment.

For screening endpoints, we used the structure and function of generic aquatic and terrestrial populations and communities, including threatened and endangered species, that might be exposed to HAP emissions via soil or water. The assessment endpoints are relatively generic with respect to descriptions of the environmental values that are to be protected and the characteristics of the ecological entities and their attributes. We assumed in the assessment that these ecological receptors were representative of sensitive individuals, populations, and communities present near these facilities.

The HAP we included in the quantitative ecological assessment are the same HAP that we evaluated in the multipathway human health assessment: cadmium, lead, mercury and PAH. We derived estimated media concentrations for each of these HAP from the media concentrations estimated in the multipathway exposures assessment. We chose exposure pathways to reflect the potential routes of exposure through sediment, soil, water, and air. We selected these environments because they are considered representative of locations of generic populations and communities most likely to be exposed to the HAP. Within these environments, the receptors evaluated consisted of two distinct groups: terrestrial and aquatic (*i.e.,* including aquatic, benthic, and soil organisms; terrestrial plants and wildlife; and herbivorous, piscivorus, and carnivorous wildlife).

The chronic ecological toxicity screening values used in the assessment were estimates of the maximum concentrations that would not be expected to affect survival, growth, or reproduction of sensitive species after long-term (more than 30 days) exposure to HAP. We screened HAP, pathways, and receptors using the ecological HQ method, which simply calculates the ratio of the estimated environmental concentrations to the selected ecological screening values.

The results of our ecological assessment show that for all pollutants assessed, and for all pathways assessed, the ecological HQ values are less than 1. Therefore, it is not likely that any of the HAP emitted would pose an ecological risk to ecosystems near any of these facilities.

With regard to endangered species, we assumed that the screening values were protective of sensitive species, including threatened or endangered species. There are no available ecological toxicity test data for threatened and endangered species for these HAP. As such, the actual sensitivities of any threatened or endangered species located in the vicinity of these facilities is unknown. However, in order to be health-protective, we selected ecological screening values for the most sensitive species available for use in the analysis. Also, we are not familiar with any species that have become threatened or endangered as a result of emissions of these chemicals from stationary combustion turbines. Therefore, we feel it is not likely that any threatened and endangered species, if they exist around these facilities, would be adversely affected by these HAP emissions.

V. Analysis of the Emergency Turbine Subcategory

Emergency stationary combustion turbines are stationary combustion turbines that operate in an emergency situation. Examples include stationary combustion turbines used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility is interrupted, or stationary combustion turbines used to pump water in the case of fire or flood, etc. Emergency stationary combustion turbines do not include stationary combustion turbines used as peaking units at electric utilities or stationary combustion turbines at industrial facilities that typically operate at low capacity factors. Emergency stationary combustion turbines may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are required by the manufacturer, the vendor, or the insurance company associated with the turbine.

Usually one or two emergency turbines are located at a given facility. These units run mostly on oil and operate approximately 30 hours per year, per turbine. Regular testing of these units (done to ensure they will be operational during an emergency) may bring the total operating hours for a turbine up toward 200 hours per year, per turbine, or approximately 400 hours per facility. Given that these units burn less oil than allowed under the MACT standards for lean premix and diffusion flame gas-fired turbines (1,000 hours per facility), we expect the maximum annual average HAP concentrations in air to be much less for emergency turbines. Therefore, we expect the risks and hazards to be less.

VI. Analysis of the North Slope Turbine Subcategory

We have identified 120 stationary combustion turbines that are located on the North slope of Alaska. Of these, 112 are diffusion flame gas-fired units, and eight are lean premix gas-fired turbines. The total number of oil hours used, per year, by any facility we identified on the North Slope is much less than 1,000 hours. Because we have determined that facilities burning oil for fewer than 1,000 hours per year meet the statutory criteria for delisting, we concluded that stationary combustion turbines located on the North Slope of Alaska also meet the delisting criteria.

Given the standard EPA risk assessment methods used, and the health-protective assumptions made in the assessment, we have made an initial determination that all sources in the four subcategories meet the human health and environmental criteria in CAA section 112(c)(9)(B) and should be removed from the source category list.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adverse affect in a material way the economy, a sector to the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed action constitutes a ''significant regulatory action'' because it may raise novel policy issues and is therefore subject to OMB review. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The proposed action will remove two subcategories from the combustion turbine source category and, therefore, eliminate the need for information collection toward regulatory compliance under the CAA. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of today's proposed action on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this proposed action, can include manufacturing (NAICS 3999–03) and air transportation (NAICS 4522–98 and 4512–98) operations that employ less than 1,000 people and engineering services (NAICS 8711–98) operations that earn less than $20 million annually; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed action on small entities, I certify that the proposed action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The proposed rule will eliminate the burden of additional controls to be applied to two subcategories of the combustion turbine source category, and associated operating, monitoring and reporting requirements. We have, therefore, concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 1044, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. In any event, EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Because the proposed rule removes two subcategories from the combustion turbine source category from regulatory consideration, it actually reduces the burden established under the CAA. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

The proposed 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 the proposal.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed action will eliminate control requirements for two subcategories from the combustion turbine source category and, therefore, reduces control costs and reporting requirements for any tribal entity operating a turbine contained in either of these subcategories. Thus, Executive Order 13175 does not apply to the proposed rule.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This determination is based on the fact that the noncancer human health values we used in this analysis (*e.g.*, RfC) are determined to be protective of sensitive sub-populations, including children. Also, while the cancer human health values do not always expressly account for cancer effects in children, the cancer risks posed by turbines in these two subcategories are sufficiently low so as not to be concern for anyone in the population, including children. In addition, the public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assesses results of early life exposure to the HAP emitted by lean premix gas-fired combustion turbines and diffusion flame gas-fired combustion turbines.

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

The proposed rule is not subject to Executive Order 13211 (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 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (Public Law No. 104–113, section 12(d) 915 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials, the National Fire Protection Association A), and the Society of Automotive Engineers. The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. The proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 31, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–7775 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0196; FRL–7643–9]

RIN: 2060–AK73

National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 5, 2004, EPA published final national emission standards for hazardous air pollutants (NESHAP) for stationary combustion turbines. As part of the NESHAP, EPA established eight subcategories of stationary combustion turbines. Elsewhere in this **Federal Register**, EPA is publishing a proposed rule to delete four of these subcategories from the source category list required by section 112(c)(1) of the Clean Air Act (CAA). The EPA has made an initial determination that the four subcategories satisfy the criteria for deletion from the source category list established by section 112(c)(9)(B).

In this companion action, EPA is proposing to stay the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories, which are the two principal subcategories we are proposing to delist. This action is necessary to avoid wasteful and unwarranted expenditures on installation of emission controls which will not be required if the subcategories are delisted.

DATES: *Comments.* Written comments on the proposed rule must be received by EPA no later than May 24, 2004.

Public Hearing. A public hearing regarding the proposed rule will be held if requests to speak are received by the EPA on or before April 14, 2004. If requested, a public hearing will be held on April 21, 2004.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, or through hand delivery/courier. Electronic comments may be submitted on-line at *http://www.epa.gov/edocket/.* Written comments sent by U.S. mail should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number OAR–2003–0196, Room B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. Written comments delivered in person or by courier (*e.g.,* FedEx,

Airborne, and UPS) should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number OAR–2003–0196, Room B102, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is requested by April 14, 2004, the public hearing will be held in our EPA Office of Administration Auditorium, Research Triangle Park, NC on April 21, 2004. Persons interested in presenting oral testimony should contact Ms. Kelly A. Rimer, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2962. Persons interested in attending the public hearing should also contact Ms. Rimer to verify the time of the hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly A. Rimer, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2962, electronic mail address *rimer.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established an official public docket for this action under Docket ID Number OAR–2003–0196. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20004. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked "late.'' The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search'' and key in Docket ID No. OAR–2003–0196. The system is an "anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2003–0196. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: EPA Docket Center (Air Docket), U.S. EPA West, (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2003–0196.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW, Washington, DC 20004, Attention Docket ID No. OAR–2003–0196. Such deliveries are

only accepted during the Docket Center's normal hours of operation.

By Facsimile. Fax your comments to: (202) 566–1741, Docket ID No. OAR–2003–0196.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Kelly Rimer, c/o Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27709, Attention Docket ID No. OAR–2003–0196. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Applicable Law. Pursuant to CAA section 307(d)(1)(V), the Administrator has determined that it is appropriate to conduct this rulemaking according to the procedures established by CAA section 307(d).

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the regulation.	4911	2211	Electric power generation, transmission, or distribution.
	4922	486210	Natural gas transmission.
	1311	211111	Crude petroleum and natural gas production.
	1321	211112	Natural gas liquids producers.
	4931	221	Electric and other services combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.6085 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Description of the Proposed Rule

Elsewhere in today's **Federal Register**, EPA is proposing a rule to amend the list of categories of sources that was developed pursuant to CAA section 112(c)(1). The EPA is proposing to delete four subcategories from the Combustion Turbines source category. Final MACT standards creating these subcategories was published on March 5, 2004. The standards will be published soon and will be codified at 40 CFR part 63, subpart YYYY. The subcategories, as defined in 40 CFR 63.6175, are: (1) Lean premix gas-fired stationary combustion turbines (also referred to herein as "lean premix gas-fired turbines''), (2) diffusion flame gas-fired stationary combustion turbines (also referred to herein as "diffusion flame gas-fired turbines''), (3) emergency stationary combustion turbines, and 4) stationary combustion turbines located on the North Slope of Alaska.

The proposed rule to amend the source category list is being issued in part to respond to a petition submitted by the Gas Turbine Association (GTA) and in part upon the Administrator's own motion. Petitions to remove a source category from the source category list are permitted under section 112(c)(9) of the CAA. The proposed rule to delete the four subcategories is based on an initial determination by EPA that the subcategories satisfy the substantive criteria for deletion set forth in section 112(c)(9)(B). The proposed rule to delete the subcategories that appears elsewhere in today's **Federal Register** contains a detailed description of the technical basis for the initial determination.

Although EPA is proposing to delete from the source category list four subcategories established by the final MACT standards for Stationary Combustion Turbines, CAA section 112(d)(10) provides that the standards for the four subcategories will take effect upon publication of the standards. All turbines in the lean premix gas-fired turbine and the diffusion flame gas-fired turbine subcategories which were constructed or reconstructed after January 14, 2003, will then be required to comply immediately with the emission standards for new sources. This may cause some sources in the two subcategories to make immediate expenditures on installation and testing of emission controls, even though such controls will not be required if we adopt a final rule to delete these subcategories. In view of our initial determination that the statutory criteria for delisting have been met for all sources in the four subcategories, we consider it inappropriate and contrary to statutory intent to mandate such expenditures until after a final determination has been made whether or not these subcategories should be delisted. Such expenditures would be wasteful and unwarranted if we take final action to delist these subcategories. Moreover, if we take final action to delist the subcategories, sources constructed or reconstructed while the rulemaking to delist is pending would bear a regulatory burden not placed on identical sources constructed or reconstructed thereafter. Accordingly, we are proposing this rule to stay the effectiveness of the emission standards for new sources for the lean premix gas-fired turbine and diffusion flame gas-fired turbine subcategories during the pendency of the rulemaking to delete these subcategories.

We are mindful that there would be no need to stay the effectiveness of the standards for new sources in the two subcategories if a rulemaking to delist the affected sources had been completed before promulgation of the final MACT standards for combustion turbines. However, we note that the GTA petition was not submitted until quite late in the regulatory process. Moreover, we generally do not make a definite determination concerning the characteristics of subcategories until promulgation of final MACT standards. In these circumstances, we do not believe it would be fair to make certain affected sources bear the burden of a delay in our determination that a subcategory meets the statutory criteria for delisting.

The proposed stay is consistent with the precedents we have established in similar circumstances in the past. In 1991, we issued a final rule staying the effective date of the National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licenses and not covered by Subpart H (40 CFR part 61, Subpart H) (40 CFR part 61, Subpart I) for commercial nuclear power reactors during the pendency of another rulemaking to rescind the standards for those facilities (56 FR 37158 August 5, 1991). The rescission was authorized by section 112(d)(9) of the CAA (the ''Simpson amendment''), which provides that we may decline to regulate Nuclear Regulatory Commission (NRC) licensees under CAA section 112 if the Administrator determines that the regulatory program established by the NRC for a category or subcategory provides an ample margin of safety to protect the public health. We had made an initial determination that the NRC program for commercial nuclear power reactors met this test, and we reasoned that ''it would frustrate the evident purpose of Section 112(d)(9) if EPA were to permit Subpart I to take effect for this subcategory during the pendency of the rulemaking on rescission'' (56 FR 37159). That action was not challenged.

In 1995, we acted to provide another type of interim relief during a delisting rulemaking. We suspended the listing of caprolactam, during a rulemaking to delete caprolactam from the list of HAP established by CAA section 112(b)(1) for purposes of determining the applicability of title V permitting requirements (60 FR 081, September 18, 1995). We based that action on our determination that ''retention, during the rulemaking to delist caprolactam, of permit application requirements which will no longer exist after the delisting process has been completed would result in unnecessary private and public expenditures on preparation, submission, and processing of such applications, and would yield no environmental benefits'' (60 FR 084–85). That interim relief action also was not challenged.

We are proposing to stay the effectiveness of the combustion turbines emission standards for new sources in the lean premix gas-fired turbines and the diffusion flame gas-fired turbines subcategories, but only during the pendency of the rulemaking to delist the subcategories. It is not our intention by staying the effectiveness of the standards to change the definition of new sources within these subcategories or to alter the status of any individual source. If the subcategories are not ultimately delisted, the stay will be lifted, and all sources in the subcategories constructed or reconstructed after January 14, 2003 will then be subject to the final standards. The sources will then be given the same time to make the requisite demonstration of compliance they would have had if there had been no stay.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adverse affect in a material way the economy, a sector to the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed action constitutes a ''significant regulatory action'' because it may raise novel policy issues and is therefore subject to OMB review. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The proposed action will stay the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories until a conclusion is reached regarding deletion and therefore eliminate the need for information collection toward regulatory compliance under the CAA. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this proposed action, can include manufacturing (NAICS 3999–03) and air transportation (NAICS 4522–98 and 4512–98) operations that employ less 1,000 people and engineering services (NAICS 8711–98) operations that earn less than $20 million annually; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed rule on small entities, I certify that this

proposed action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The proposed rule will stay the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. This will stay the requirements to apply controls and will also stay associated operating, monitoring and reporting requirements. These burdens will be permanently lifted if EPA ultimately removes the four source categories from the stationary combustion turbine source category, and temporarily lifted if EPA does not ultimately delist the subcategories. We have, therefore, concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 1044, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. In any event, EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

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

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Today's action proposes to stay the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. It does not impose any additional requirements on the States and does not affect the balance of power between the States and the Federal government. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed action will stay the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. Executive Order 13175 does not apply to the proposed rule.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is not economically

significant as defined in Executive Order 12866, and because this action is not based on health or safety risks. Thus, Executive Order 13045 does not apply to this rule.

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

Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' The proposed rule is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) 915 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. The proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 31, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–7776 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 69, No. 67

Wednesday, April 7, 2004

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

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Eastern Region: Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Eastern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR 215.5(a) and 36 CFR 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision. In addition, the Responsible Official in the Eastern Region will also publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR 215(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Patricia Rowell, Regional Appeals Assistant, Eastern Region, Gaslight Building, 7th Floor, 626 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202 Phone: 414–297–3439.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Eastern Region will give legal notice of decisions subject to appeal under 36 CFR parts 215 and 217 in the following newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeals shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be sued to provide notice.

Eastern Region

Regional Forester Decisions

Affecting National Forest System lands in the states of Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York; West Virginia, Wisconsin and for any decision of Region-wide Impact.

Journal/Sentinel, published daily in Milwaukee, Milwaukee County, Wisconsin.

National Forests

Allegheny National Forest, Pennsylvania

Forest Supervisor Decisions

Warren Times Observer, Warren, Warren County, Pennsylvania.

District Ranger Decisions

Bradford District: *Bradford Era,* Bradford, McKean County, Pennsylvania.

Marienville District: *The Derrick,* Oil City, Pennsylvania.

Ridgway District: *The Ridgway Record*, Ridgway, Elk County, Pennsylvania.

Chequamegon/Nicolet National Forest, Wisconsin

Forest Supervisor Decisions

The Journal/Sentinel, published daily in Milwaukee, Milwaukee County, Wisconsin.

District Ranger Decisions

Eagle River/Florence District: *The Daily News*, published daily except Saturday, Rhinelander, Wisconsin.

Great Divide District: *The Daily Press*, published daily in Ashland County, Ashland, Wisconsin.

Medford/Park Falls District: *The Star News*, published weekly in Medford, Taylor County, Wisconsin and *The Park Falls Herald,* published weekly in Park Falls, Price County, Wisconsin.

Washburn District: *The Daily Press*, published daily in Ashland County, Ashland, Wisconsin.

Lakewood/Laona District: *The Daily News*, published daily except Saturday, Rhinelander, Wisconsin.

Chippewa National Forest, Minnesota

Forest Supervisor Decisions

Bemidji Pioneer, published daily in Bemidji, Beltrami County, Minnesota.

District Ranger Decisions

Blackduck District: *The American*, published weekly in Blackduck, Beltrami County, Minnesota.

Cass Lake District: *The Cass Lake Times*, published weekly in Cass Lake, Cass County, Minnesota.

Deer River and Marcell Districts: *The Western Itasca Review*, published weekly in Deer River, Itasca County, Minnesota.

Walker District: *The Pilot/ Independent*, published weekly in Walker, Cass County, Minnesota.

Green Mountain National Forest, Vermont

Forest Supervisor Decisions

The Rutland Herald, published daily in Rutland, Rutland County, Vermont.

District Ranger Decisions

The Rutland Herald, published daily in Rutland, Rutland County, Vermont is the formal newspaper of record for all

district ranger decisions. Other newspapers listed are optional.

Manchester District: *The Rutland Herald*, published daily in Rutland, Rutland County, Vermont; All others optional, The Bennington Banner, published daily in Bennington, Bennington County, Vermont *Manchester* Journal, published weekly in Bennington County, Vermont and *The Brattleboro Reformer,* published daily in Brattleboro, Windham County, Vermont.

Middlebury District: *The Rutland Herald*, published daily in Rutland, Rutland County, Vermont; All others optional, *The Addison County Independent,* published twice weekly in Middlebury, Addison County, Vermont.

Rochester District: *The Rutland Herald*, published daily in Rutland, Rutland County, Vermont; All others optional, *The Burlington Free Press,* published daily in Burlington, Chittenden County, Vermont; *The Valley Reporter,* published weekly in Washington County Vermont and *The Randolph Herald,* published weekly in Orange County, Vermont.

Finger Lakes National Forest, New York

Forest Supervisor Decisions

The Ithaca Journal, published daily in Ithaca, Tompkins County, New York.

District Ranger Decisions

Hector District: *The Ithaca Journal*, published daily in Ithaca, Tompkins County, New York.

Hiawatha National Forest, Michigan

Forest Supervisor Decisions

The Daily Press, published daily in Escanaba, Delta County, Michigan.

District Ranger Decisions

Rapid River District: *The Daily Press,* published daily in Escanaba, Delta County, Michigan.

Manistique District: *The Daily Press,* published daily in Escanaba, Delta County, Michigan.

Munising District: *The Mining Journal,* published daily in Marquette, Marquette County, Michigan.

Sault Ste. Marie District: *The Evening News,* published daily in Sault Ste. Marie.

St. Ignace District: *The Evening News,* published daily in Sault Ste. Marie, Chippewa County, Michigan.

Hoosier National Forest, Indiana

Forest Supervisor Decisions

The Hoosier Times, published in Bloomington, Monroe County, Indiana.

District Ranger Decisions

Brownstown District: *The Hoosier Times,* published in Bloomington, Monroe County, Indiana.

Tell City District: *The Perry County News,* published in Tell City, Perry County, Indiana.

Huron-Manistee National Forest, Michigan

Note: 1st Newspaper listed is mandatory—others optional.

Forest Supervisor Decisions

Cadillac News, published daily in Cadillac, Wexford County, Michigan; *Lake County Star,* published weekly in Baldwin, Lake County, Michigan; *Ludington Daily News,* published daily in Ludington, Mason County, Michigan; *Alcona County Review,* published weekly in Harrisville, Alcona County, Michigan; *Manistee News Advocate,* published daily in Manistee, Manistee County, Michigan; *Oscoda County Herald,* published weekly in Mio, Oscoda County, Michigan; *Crawford County Avalanche,* published weekly in Grayling, Crawford County, Michigan; *Oscoda Press,* published weekly in Oscoda, Iosoco County, Michigan; *Fremont Times-indicator,* published weekly in Fremont, Newaygo County, Michigan; *Oceana-Herald Journal,* published weekly in Hart, Mason County, Michigan; *Muskegon Chronicle,* published in Muskegon, Muskegon County, Michigan; *Grand Rapids Press,* published daily in Grand Rapids, Kent County, Michigan and *Big Rapids Pioneer,* published daily in Big Rapids, Mecosta County, Michigan.

District Ranger Decisions

Baldwin District: *Lake County Star,* published weekly in Baldwin, Lake County, Michigan and *Ludington Daily News,* published daily in Ludington, Mason County, Michigan.

Cadillac District: *Cadillac News,* published daily in Cadillac, Wexford County, Michigan.

Harrisville District: *Alcona County Review,* published weekly in Harrisville, Alcona County, Michigan.

Manistee District: *Manistee News Advocate,* published daily in Manistee, Manistee County, Michigan.

Mio District: *Oscoda County Herald,* published weekly in Mio, Oscoda County, Michigan and *Crawford County Avalanche,* published weekly in Grayling, Crawford County, Michigan.

Tawas District: *Oscoda Press,* published weekly in Oscoda, Iosco County, Michigan.

White Cloud District: *Fremont Times-Indicator,* published weekly in Fremont, Newaygo County, Michigan and *Oceana-Herald Journal,* published weekly in Hart, Mason County, Michigan.

Mark Twain National Forest, Missouri

Forest Supervisor Decisions

Rolla Daily News, published in Rolla Phelps County, Missouri.

District Ranger Decisions

Ava/Cassville District: *Springfield News Leader,* published daily in Springfield, Greene County, Missouri.

Cedar Creek District: *Fulton Sun*, published daily in Fulton, Callaway County, Missouri.

Doniphan District: *Prospect News*, published weekly in Doniphan, Ripley County, Missouri.

Eleven Point District: *Current Wave*, published weekly in Eminence, Shannon County, Missouri.

Rolla District: *Houston Herald*, published weekly (Thursdays) in Houston, Texas County, Missouri.

Houston District: *Houston Herald*, published weekly (Thursdays) in Houston, Texas County, Missouri.

Poplar Bluff District: *Daily American Republic*, published daily in Poplar Bluff, Butler County, Missouri.

Potosi District: *The Independent-Journal*, published Thursday in Potosi, Washington County, Missouri.

Fredericktown District: *The Democrat-News,* published weekly in Fredericktown, Madison County, Missouri.

Salem District: *The Salem News*, published Tuesday and Thursday in Salem, Dent County, Missouri.

Willow Springs District: *West Plains Daily Quill*, published daily in West Plains, Howell County, Missouri.

Midewin Tall Grass Prairie, Wilmington, Illinois

Prairie Supervisor Decisions

The Herald News, published daily in Joliet, Illinois.

Monongahela National Forest, Elkins, West Virginia

Forest Supervisor Decisions

The Elkins Inter-Mountain, published daily in Elkins, Randolph County, WV.

District Ranger Decisions

Cheat District: *The Parsons Advocate*, published weekly in Parsons, Tucker County, WV.

Gauley District: *The Nicholas Chronicle*, published weekly in Summersville, Nicholas County, WV.

Greenbrier District: *The Pocahontas Times*, published weekly in Marlinton, Pocahontas County, WV.

Marlinton District: *The Pocahontas Times*, published weekly in Marlinton, Pocahontas County, WV.

Potomac District: *The Grant County Press*, published weekly in Petersburg, Grant County, WV.

White Sulphur District: *The Register-Herald*, published daily in Beckley, Raleigh County, WV.

Ottawa National Forest, Michigan

Forest Supervisor Decisions

The Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan and for those on the Iron River District, *The Reporter*, published in Iron River, Iron County, Michigan.

District Ranger Decisions

Bessemer, Kenton, Ontonagon and Watersmeet Districts: *The Ironwood Daily Globe*, published in Ironwood, Gogebic County, Michigan.

Iron River District: *The Reporter*, published in Iron River, Michigan, Iron County, Michigan.

Bergland District: *The Ironwood Daily Globe*, published in Ironwood, Gogebic County, Michigan.

Shawnee National Forest, Illinois

Forest Supervisor Decisions

Southern Illinoisan, published daily in Carbondale, Jackson County, Illinois.

District Ranger Decisions

Vienna-Elizabethtown, Jonesboro-Murphysboro Districts: *Southern Illinoisan*, published daily in Carbondale, Jackson County, Illinois.

Superior National Forest, Minnesota

Forest Supervisor Decisions

Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota.

District Ranger Decisions

Gunflint District: *Cook County News-Herald,* published weekly in Grand Marais, Cook County, Minnesota.

Kawishiwi District: *Timberjay,* published weekly in Ely, St. Louis County, Minnesota.

LaCroix District: *Mesabi Daily News,* published daily in Virginia, St. Louis County, Minnesota.

Laurentian District: *Mesabi Daily News,* published daily in Virginia, St. Louis County, Minnesota.

Tofte District: *Duluth News-Tribune,* published daily in Duluth, St. Louis County, Minnesota.

Wayne National Forest, Ohio

Forest Supervisor Decisions

The Athens Messenger, published in Athens, Athens County, Ohio.

District Ranger Decisions

Athens District: *Athens Messenger,* (same for Marietta Unit), published in Athens, Athens County, Ohio.

Ironton District: *The Ironton Tribune,* published in Ironton, Lawrence County, Ohio.

White Mountain National Forest, New Hampshire and Maine

Forest Supervisor Decisions

The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Ammonoosuc District: *The Union Leader,* published daily in Manchester, County of Hillsborough, New Hampshire.

Androscoggin District: *The Union Leader,* published daily in Manchester, County of Hillsborough, New Hampshire.

Evans Notch District: *The Lewiston Sun,* published daily in Lewiston, County of Androscoggin, Maine.

Pemigewasset District: *The Union Leader,* published daily in Manchester, County of Hillsborough, New Hampshire.

Saco District: *The Union Leader,* published daily in Manchester, County of Hillsborough, New Hampshire.

Dated: April 1, 2004.

Randy Moore,

Regional Forester.

[FR Doc. 04–7850 Filed 4–6–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Rescission of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan

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

ACTION: Notice of the rescission of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Japan.

SUMMARY: In response to a request from the International Steel Group Inc. (''ISG'') (''Petitioner''), the Department of Commerce (''Department'') initiated an administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan covering the period August 1, 2002 through July 31, 2003. On March 2, 2004, Petitioner withdrew its request for an administrative review. The Department is now rescinding this administrative review.

EFFECTIVE DATE: April 7, 2004.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Aishe Allen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–3207 or 202–482–0172, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2003, Petitioner requested that the Department initiate an administrative review of the antidumping duty order on certain corrosion-resistant carbon products from Japan for the period of review (''POR'') August 1, 2002 through July 31, 2003. On September 30, 2003, the Department published a notice of initiation of this antidumping duty administrative. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews* 68 FR 56262 (September 30, 2003). The initiation covered the six companies that were requested by the Petitioner for an administrative review: JFE Steel Corporation (''JFE''), Kawasho Corporation, Nippon Steel Corporation (''NSC''), Kobe Steel Company Limited (''Kobe''), Nisshin Steel (''Nisshin''), and Sumitomo Metals Industries, Ltd. (''SMI''). On March 2, 2004, Petitioners withdrew its request for review.

Scope of the Review

The products covered by the antidumping duty order include 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 HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030,

7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 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, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant 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 order 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 order 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 order 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%–60%–20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Also excluded from this order are products meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet (''CRBG'') with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004″ (0.10 mm) to 0.030″ (0.762 mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value

= aim less than +/−0.2; Lankford value = ≥1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) Nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥1.0 micrometers; tin layer only ≥0.05 micrometers, nickel-graphite layer only >0.2 micrometers, and bottom side: nickel layer ≥1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥1.0 micrometers; nickel-graphite layer ≥0.5 micrometers; bottom side: nickel layer ≥1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥1.0 micrometers; bottom side: nickel layer ≥1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥1.0 micrometers; nickel-phosphorous layer ≥0.1 micrometers; bottom side : nickel layer ≥1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥1.0 micrometers; tin layer only ≥0.05 micrometers; bottom side: nickel layer ≥1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥1 micrometer; tin layer alone ≥0.05 micrometers; bottom side: nickel layer ≥1.0 micrometer.

Also excluded from this order are products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate.

Also excluded from this order are products meeting the following specifications: (1) Flat-rolled products (provided for in HTSUS subheading 7210.49.00), other than of high-strength steel, known as ‘‘ASE Iron Flash’’ and either: (A) Having a base layer of zinc-based zinc-iron alloy applied by hot-dipping and a surface layer of iron-zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40 percent by weight of zinc; or (B) two-layer-coated corrosion-resistant steel with a coating composed of (a) a base coating layer of zinc-based zinc-iron alloy by hot-dip galvanizing process, and (b) a surface coating layer of iron-zinc alloy by electro-galvanizing process, having an effective amount of zinc up to 40 percent by weight, and (2) corrosion resistant continuously annealed flat-rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or

more but not over 0.008; and meeting the characteristics described below: (A) products with one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two-layer coating composed of a base nickel-iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four-layer coating composed of a base nickel-iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel-phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster-agent-added nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. Additionally, § 351.213(d)(1) provides that the Secretary may extend the time limit for withdrawal requests where it is reasonable.

On March 2, 2004, Petitioner withdrew its request for an administrative review. Since the review was initiated on September 30, 2003, more than 90 days has passed since the initiation of the review. However, in this case, the Secretary finds that it is reasonable to extend the 90 day limit for Petitioner to withdraw its request for review because Petitioner was the only party to request a review in this case. Continuing the review would only require the parties and the Department to expend time and resources on a review in which the only party that requested the review is no longer interested.

Therefore, for the above stated reasons, the Department is rescinding the administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan covering the period August 1, 2002 through July 31, 2003. This notice is in accordance with section 777(i)(1) of the Act and § 251.213(d)(4) of the Department's regulations.

Dated: March 31, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–7873 Filed 4–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: April 7, 2004.

FOR FURTHER INFORMATION CONTACT: Ann Barnett–Dahl or Helen Kramer at (202) 482–3833 or (202) 482–0405, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUMMARY: On December 24, 2003, in response to requests made by Nucor Corporation ("Nucor") and U.S. Steel Corporation ("U.S. Steel"), the Department of Commerce (the Department) published in the **Federal Register** (68 FR 74550–02) a notice announcing the initiation of an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Thailand. The review period is November 1, 2002 October 31, 2003. This review has now been rescinded because Nucor and U.S. Steel have withdrawn their requests for review.

Scope of the Review

For purposes of this review, the products covered are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of

definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

• Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).

• Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.

• Ball bearing steels, as defined in the HTSUS.

• Tool steels, as defined in the HTSUS.

• Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

• ASTM specifications A710 and A736.

• USS abrasion–resistant steels (USS AR 400, USS AR 500).

• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

• Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise under review is dispositive.

Background

On November 26, 2003, Nucor, and on November 28, 2003, U.S. Steel (Petitioners) requested an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Thailand. On December 24, 2003, the Department published in the **Federal Register** (68 FR 74550–02) Notice of Initiation of Antidumping and Countervailing Duty Administrative Review. On March 19, 2003, both Nucor and U.S. Steel withdrew their requests for review. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Given that Nucor and U.S. Steel were the only parties to request the administrative review, and their withdrawal requests are timely, we are rescinding this review of the antidumping duty order on certain hot–rolled carbon steel flat products from Thailand covering the period November 1, 2002 to October 31, 2003.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: March 31, 2004.

Jeffery A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–7874 Filed 4–6–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012304B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Exempted Fishing Permit

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

ACTION: Issuance of an Exempted Fishing Permit (EFP).

SUMMARY: NMFS announces the issuance of EFP 04–01 to the Alaska Fisheries Development Foundation (applicant). The EFP authorizes the applicant to develop and test hook-and-line gear for rockfish harvest in the Southeast Outside District (SEO) of the Gulf of Alaska (GOA) that historically had been harvested with trawl gear. This EFP is necessary to provide information not otherwise available through research or commercial fishing operations. The intended effect of this action is to promote the purposes and policies of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Copies of the EFP and the Environmental Assessment (EA) prepared for the EFP are available from Lori J. Durall, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska authorizes the issuance of EFPs to fish for groundfish in a manner that would otherwise be prohibited under existing regulations. The procedures for issuing EFPs are set out at 50 CFR 679.6.

On February 5, 2004, NMFS announced in the **Federal Register** the receipt of an application for an EFP (69 FR 5509). The applicant requested authorization to develop and test hook-and-line gear for rockfish harvest in the SEO of the GOA. Pacific ocean perch, pelagic shelf rockfish, and other slope rockfish historically have been

harvested in this area by trawl gear. Trawling in the SEO has been prohibited since March 23, 1998 (63 FR 8356, February 19, 1998). This EFP will provide information not otherwise available through research or commercial fishing operations because it is not economically feasible for vessels to participate in an experiment of this extent and rigor during the commercial fisheries. The goal of this project is to improve the utilization of rockfish species in the SEO in ways that are consistent with Magnuson-Stevens Act national standard 1, which directs that conservation and management measures must achieve optimum yield from each fishery, and national standard 5, which seeks to promote efficiency in the utilization of fishery resources.

The Regional Administrator has approved the EFP application and has issued EFP 04–01 to the applicant. Details of the project are in the environmental assessment prepared for this action (see **ADDRESSES**). The project has two phases: (1) development of two hook-and-line gear types that can be effectively handled on typical Southeast Alaska fishing vessels and that successfully target rockfish species, and (2) comparative testing of the gear types developed in Phase I in terms of catch of target rockfish species per unit of effort and incidental catch of nontarget species. Because this project is in two phases, the applicant is permitted to conduct Phase I activities only, with permitting for Phase II contingent on the final report from Phase I and the Alaska Fisheries Science Center's approval of the experimental design for Phase II. The time period of the project is April 15, 2004, through April 15, 2005, with the possibility to extend the permit up to 12 months in case unforseen events delay completion of the project.

The EFP is necessary to allow the applicant to develop and test hook-and-line gear for rockfish in the SEO with certain exemptions from fishery closures, prohibited species catch (PSC) limits, and fish retention and discard requirements. The exemptions are necessary to allow the permit holder to efficiently conduct the testing and to reduce potential impacts on other hook-and-line fisheries. The EFP provides exemptions from: (1) hook-and-line fishery closures under 50 CFR 679.7(a)(2) due to reasons other than overfishing concerns, (2) individual fishing quota retention requirements under 50 CFR 679.7(f)(11), (3) PSC limits for halibut under the GOA annual harvest specifications (69 FR 9261, February 27, 2004) and 50 CFR 679.21(d)(4)(iii)(C), and (4) maximum retainable amounts for rockfish fisheries under 50 CFR 679.20(e). The total amount of groundfish allowed to be harvested is 179 metric tons (mt), including a 10 mt limit on sablefish. Because sufficient total allowable catch (TAC) amounts are available in the SEO for the rockfish species likely to be taken during the project, all groundfish, except sablefish, will be deducted from the annual TAC amounts specified in the annual harvest specifications (69 FR 9261, February 27, 2004). Hook-and-line sablefish is fully allocated and managed under the individual fishing quota (IFQ) program pursuant to 50 CFR 679.40, therefore, no sablefish may be retained during the project nor counted against the annual sablefish TAC. Halibut mortality is limited to 2 mt.

Fishing contrary to notification of inseason actions, closures, or adjustments under 50 CFR 679.20, 679.21, and 679.25 is prohibited by 50 CFR 679.7(a)(2). The applicant is exempt from this prohibition to allow the project to proceed without interruption. The PSC limit for halibut may be reached during the project time period, requiring the closure of the hook-and-line fisheries in accordance with 50 CFR 679.25. Because the amounts of halibut bycatch in the hook-and-line Pacific cod fishery has caused the closure of all hook-and-line fisheries (except demersal shelf rockfish) GOA-wide in the spring of 1999, 2000, and 2001, and in the fall of 2003, the closure of the hook-and-line fisheries in the GOA is likely. The halibut mortality during the project will not be counted against the PSC limit so that other hook-and-line fisheries will not be impacted by the project.

The EFP allows the retention and sale of all groundfish species (except sablefish) taken while fishing under the EFP to offset some of the costs of the project. The applicant is exempt from the maximum retainable amounts specified in Table 10 of 50 CFR part 679 for rockfish fisheries. Because demersal shelf rockfish (DSR) are managed by the State of Alaska, which has special provisions for the retention and sale of DSR, the EFP will not relieve the applicant from compliance with the State's DSR regulations at 5 AAC 28.171. These regulations require full retention of DSR but limit the numbers of DSR that may be sold for revenue to the harvester.

Because the applicant is required to discard all halibut and sablefish, the permit exempts the applicant from the retention requirement of 50 CFR 679.7(f)(11). Under this regulation, all halibut and sablefish are required to be retained if a person on the vessel has IFQ available for halibut or sablefish for that class of vessel. Recruiting qualified individuals for the project would be difficult if the IFQ retention requirement was applied because the project does not provide an efficient use of IFQ. Because qualified participants are likely to be IFQ holders who would not want to use their IFQ during the project, the applicant is exempted from the retention requirements. All halibut and sablefish caught will be returned to the sea with minimal injury.

The applicant expects to harvest the following amounts of groundfish species during the project: 50 mt each of Pacific ocean perch, other slope rockfish, and pelagic shelf rockfish; 15 mt of rougheye/shortraker rockfish; 2 mt each of thornyhead rockfish and DSR; 10 mt of sablefish and 2 mt of halibut mortality. These levels of harvest and manner of harvest are determined to not have a significant impact on the human environment, as described in the EA (see **ADDRESSES**).

All fishing under the EFP will stop if the groundfish or halibut mortality limits in the EFP are reached. The Regional Administrator may modify the EFP to allow continuation of the project after consideration of factors including: (1) the present amount of harvest of groundfish species by the groundfish fisheries compared to the annual TACs, (2) the progress of the project to date, and (3) the potential impacts of any modification of the EFP. A draft report will be available to the public 60 days after the completion of Phase I. A final report of the results of the experiment will be made available to the public approximately six months after the end of Phase II.

Failure to comply with the terms and conditions of the EFP and all applicable provisions of 50 CFR parts 600 and 679, the Magnuson-Stevens Act, or any regulations promulgated thereunder, or any other applicable laws, may be grounds for revocation, suspension, or modification of this permit as well as civil or criminal sanctions imposed under those laws.

Classification

NMFS prepared an EA for this EFP. The Alaska Regional Administrator for NMFS concluded that no significant impact on the human environment will occur as a result of fishing under this EFP. A copy of the EA is available from NMFS (see **ADDRESSES**).

The Regional Administrator determined that fishing activities conducted pursuant to this EFP will not affect endangered and threatened species listed or critical habitat designated under the Endangered Species Act. Because fishing activities

under this EFP will have no effects on essential fish habitat, a consultation is not required under the essential fish habitat provisions of the Magnuson-Stevens Act.

This notice is exempt from review under E.O. 12866 and the Regulatory Flexibility Act (RFA). The analytical requirements of the RFA are inapplicable because prior notice and opportunity for public comment are not required for this notice.

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

Dated: April 2, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–7903 Filed 4–6–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033104B]

Marine Mammals; File Nos. 87–1743, 1066–1750

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

ACTION: Receipt of applications for permits.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit to take marine mammals: Daniel Costa, Department of Biology and Institute of Marine Sciences, University of California, Santa Cruz, California 95064 (File No. 87–1743); and Michael Williams, LGL, Alaska Research Associates, Inc., 1101 East 76th Avenue, Anchorage, Alaska 99518 (File No. 1066–1750).

DATES: Written, telefaxed, or e-mail comments must be received on or before May 7, 2004.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

File No. 87–1743: Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

File No. 1066–1750: Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments would also be submitted by facsimile to (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments would also be submitted by e-mail. The mailbox address for providing email comments is NMFS.Pr1Comments@noaa.gov. Include in the subject line of the e-mail comment the applicable document identifier: File No. 87–1743 or File No. 1066–1750.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Applications for permit

File No. 87–1743: The applicant, Daniel Costa, proposes to continue long-term behavioral, physiological, and life history research studies on northern elephant seals (*Mirounga angustirostris*) throughout their range. The proposed annual activities are described below.

Tagging and marking studies: Up to 1600 juvenile and 1250 adult seals of either sex would be captured, tagged, and marked, with up to 14, 250 animals incidentally harassed during these procedures.

Weigh, Measure, and Sample: Two hundred juveniles and 50 adults of either sex would be captured, sedated as necessary, weighed, measured (length/girth/ultrasound), and sampled (20 ml blood, flipper skin, blubber and muscle biopsy); 100 of the juveniles and all adults would be captured twice; up to 13,750 animals would be incidentally harassed during these activities.

Apply Satellite Tracking tags, Time-Depth Speed, Oceanography Recorders: Up to 50 juveniles and 100 adults of either sex would be captured, chemically restrained, weighed and measured (length/girth/ultrasound), injected with Evans Blue dye for blood volume estimates, blood and biopsy sampled, tagged with a dive-depth-swim speed-oceanography instrument package and/or a satellite tracking transmitter and released, and up to 20 individuals would have stomach temperature telemeters placed using a gastric tube; seals would be re-captured, weighed, stomach lavaged, have instruments removed, and be released; up to 1200 seals would be incidentally harassed during these activities.

Translocation Studies of Diving: Up to 80 juveniles would be captured, sedated, handled as above, transported to Long Marine Laboratory (LML) or Sonoma State University and held overnight, transported to a different site and released at sea up to 200 km from Ano Nuevo; instruments would be attached as above; seals that return to the original capture site would be recaptured, sedated, have diving instruments removed and be weighed, measured, blood sampled and re-released. Of these: 60 would have a radio-transmitter, time-depth recorder, and satellite tracking transmitter attached; individuals would also have either a CTD (conductivity temperature and depth) tag or an acoustic data logger attached in addition to or instead of the time depth recorder; 10 would be injected with doubly-labeled water (oxygen 18 and tritiated water); 10 would be outfitted with a small video or digital camera, a radio transmitter and/or a satellite tag glued to the pelage; up to 800 seals would be incidentally harassed during capture operations.

Fasting Energetics and Metabolic Regulation Study: Up to 90 juveniles and 40 adults of either sex would be captured, handled (weighed and measured), catheterized in the extradural vein, blood sampled, and have one of the following administered: (a) glucose (0.5 g/kg as a 25 g/dl solution); (b) insulin (0.1–0.15 units/kg); (c) glucagon (0.03 mg/kg, not to exceed a total of 1 mg); or (d) a standard clinical tracer. Animals would be recaptured, blood sampled and weighed up to four times for each project. Up to 2,600 seals would be incidentally harassed during these activities.

Fasting Metabolic Study: Up to 40 juvenile seals would be captured, chemically restrained, transported and temporarily held at LML for up to 30 days, sedated, catheterized, blood sampled, ECG measured and released. Up to 400 seals would be incidentally harassed during capture operations.

Reproductive Energetics: Up to 60 animals (30 mother/pup pairs) would be

captured. Females would be sedated (3–5 days after parturition), injected with 40 International Units of oxytocin, blood and milk (200 ml) sampled, weighed and measured as above, administered doubly-labeled water or standard clinical tracer and released. Pups would be physically restrained, weighed and measured, blood sampled, and administered tritiated or deuturated water. During mid lactation an additional blood sample would be obtained from each mother/pup pair. At the end of lactation (day 25–28), the initial procedure would be repeated on mother pup pairs except for administration of oxygen–18. Up to 2,400 seals would be incidentally harassed during these activities.

Male mating energetics: Up to 20 adult males would be captured, weighed on a truck scale, sedated, injected with tritiated water, measured and blood sampled at the beginning of the breeding season. This procedure would be repeated at the end of the breeding season. Up to 1,200 seals would be incidentally harassed during these activities.

Bioacoustics: Each year source level recordings of vocalizations and playback experiments would be conducted on 50 adult males, 50 subadult males, 50 adult females, and 50 pups for a total of 200 animals. The bioacoustics research described here involves Level B harassment (behavioral observation and recording) and could potentially alter individual seal's behavior. However, all playbacks would be brief in nature (generally less than 5 minutes), never louder than naturally occurring seal vocalization levels, and responses from the seals (if any) would be expected to be very brief (e.g. an orientation or call in response but nothing more).

File No. 1066–1750: The applicant, Michael Williams, proposes to take northern fur seals (*Callorhinus ursinus*) during disentanglement activities. The primary research focus is to estimate the annual proportion of sub-adult male seals entangled in derelict fishing gear and marine debris, compare these estimates to estimates from the Pribilof Islands of St. Paul and St. George in previous years, and capture and disentangle seals observed on both. This work would occur during the subsistence harvest round-ups and would be coordinated with subsistence harvest round-ups to prevent duplicating disturbances at harvested haulout sites. The secondary focus is to count the number of fur seals entangled, and capture and disentangle them individually after commercial harvest season has ended on St. Paul Island only. Females and pre-weaned pups would be captured during the solo captures, but it is anticipated that the vast majority of seals captured would be sub-adult males. Animals captured would be blood sampled, wounds from entangled debris would be swabbed and fecal samples would be collected. The following table outlines the number of animals proposed to be harassed and captured annually for three years.

	Harassed Intentionally (Level B)	Harassed Incidentally (Level B)	Capture, blood sample, wound swab, fecal sample (Level A)
St. Paul Island-males	6,000	1,200	110
St. Paul Island-females	15	200	15
St. Paul Island-pups	10	400	10
St. George Island-males	5,000	1,000	40

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 2, 2004.

Patrick Opay,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–7904 Filed 4–6–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032904C]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities at Vandenberg Air Force Base, CA

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

ACTION: Notice of receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments.

SUMMARY: NMFS has received a request from The Boeing Company (Boeing) for reauthorization to take small numbers of marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Boeing to take, by harassment, small numbers of several species of pinnipeds at south VAFB beginning in May 2004.

DATES: Comments and information must be received no later than May 7, 2004.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments on this action is *PR2.BOEING@noaa.gov* Include in the subject line of the e-mail comment the following document identifier: 032904C. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, (301) 713–2322, ext. 163 or Monica DeAngelis, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to

harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment''].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On December 12, 2003, NMFS received an application from Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. In addition, northern elephant seals (*Mirounga angustirostris*) may also be incidentally harassed but in even smaller numbers. Incidental Harassment Authorizations (IHAs) were issued to Boeing on May 15, 2002 (67 FR 36151, May 23, 2002) and on May 20, 2003 (68 FR 36540, June 18, 2003) each for a one-year period. The harbor where activities will take place is on south VAFB approximately 2.5 mi (4.02 km) south of Point Arguello, CA and approximately 1 mi (1.61 km) north of the nearest marine mammal pupping site (i.e., Rocky Point).

Specified Activities

Delta Mariner off-loading operations and associated cargo movements will occur a maximum of 3 times per year. The *Delta Mariner* is a 95.1–m (312–ft) long, 25.6–m (84–ft) wide steel hull ocean-going vessel capable of operating at a 2.4–m (8–ft) draft. For the first few visits to the south VAFB harbor, tug boats will accompany the *Delta Mariner*. Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the common booster core (CBC) from the *Delta Mariner* requires use of an elevating platform transporter. An additional source of noise with sound levels measured at a maximum of 82 dB A-weighted (re 20 microPascals at 1 m) 6.1 m (20 ft) from the engine exhaust (Acentech, 1998). Procedures require 2 short (approximately 1/3 second) beeps of the horn prior to starting the ignition. At 60.9 m (200 ft) away, the sound level of the EPT horn ranged from 62–70 dB A-weighted. Containers containing flight hardware items will be towed off the *Delta Mariner* by a tractor tug that generates a sound level of approximately 87 dB A-weighted at 15.2 m (50 ft) while in operational mode. Total time of *Delta Mariner* docking and cargo movement activities is estimated at between 14 and 18 hours in good weather.

To accommodate the *Delta Mariner*, the harbor will need to be dredged, removing up to 5,000 cubic yards of sediment per dredging. Dredging will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to those estimated for the wharf modification equipment: 43 to 81 dB A-weighted at 76.2 m (250 ft). Dredge operations, from set-up to tear-down, would continue 24 hours a day for 3 to 5 weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule.

A more detailed description of the work proposed for 2004 is contained in the application which is available upon request (see **ADDRESSES**) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

Habitat and Marine Mammals Affected by the Activity

Pacific Harbor Seals

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion. The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney et al., 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals on VAFB is now estimated to be 1,118 (500 hauled-out on south VAFB) based on sighting surveys and telemetry data (SRS Technologies, 2001).

The daily haul-out behavior of harbor seals along the south VAFB coastline is primarily dependent on time of day. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 76.2 m (250 ft) west of the south VAFB harbor and on rocks outside the harbor breakwater where Boeing will be conducting *Delta Mariner* operations, cargo loading, dredging activities, and reef enhancement activities. The maximum number of seals present during past dredging of the harbor was 23, with an average of 7 seals sighted per observation. The harbor seal pupping site closest to south VAFB harbor is at Rocky Point, approximately 1.6 km (1 mi) north of the harbor.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance are not

adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

California Sea Lions

During the wharf modification activity in June-July 2002, California sea lions were observed hauling out in small numbers. Although this is considered to be an unusual occurrence and is possibly related to fish schooling in the area, Boeing has included sea lions in their IHA request.

California sea lions range from British Columbia to Mexico. The minimum U.S. population estimate for California sea lions is 109,854 individuals. Since 1983, the population has grown at a rate of 6.2 percent annually. A 1985–1987 population survey indicated that most individuals on the Northern Channel Islands were on San Miguel Island, with the population ranging from 2,235 to over 17,000. The largest numbers of California sea lions in the VAFB vicinity occur at Lion Rock, 0.4 mi (0.64 km) southeast of Point Sal. This area is approximately 1.5 mi (2.41 km) north of the VAFB boundary. At least 100 sea lions can be observed during any season at this site. The Point Arguello beaches and the rocky ledges of South Rocky Point on south VAFB are haulout areas that may be used by California sea lions. In 2003, at least 145 sea lions were observed at Rocky Point, including 5 pups that did not survive due to abandonment shortly after birth. This was thought to be an El Nino effect, as there have never been any reported sea lion births at VAFB previously (Thorson, 2003). Each year, small groups of sea lions have been observed heading south along the VAFB coastline in April and May (Tetra Tech, 1997). Starting in August, large groups of sea lions can be seen moving north, in groups varying in size from 25 to more than 300 (Roest, 1995). This concurs with established migration patterns (Reeves *et al.*, 1992; Roest, 1995). Juvenile sea lions can be observed hauled-out with harbor seals along the South Base sites from July through September (Tetra Tech, 1997). Starving and exhausted subadult sea lions are fairly common on central California beaches during the months of July and August (Roest, 1995).

During the breeding season, most of California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to San Miguel Island and to the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente. Breeding season begins in mid-May, occurring within 10 days of arrival at the rookeries. Molting occurs gradually over several months in the late summer and fall. Because the molt is not catastrophic, the sea lions can enter the water to feed.

Male California sea lions migrate annually. In the spring they migrate southward to breeding rookeries in the Channel Islands and Mexico, then migrate northward in the late summer following breeding season. Females appear to remain near the breeding rookeries. The greatest population on land occurs in September and October during the post-breeding dispersal and although many of the sea lions, particularly juveniles and sub-adult and adult males, may move north away from the Channel Islands.

Other Marine Mammals

Other marine mammal species are rare to infrequent along the south VAFB coast during certain times of the year and, therefore, are unlikely to be harassed by Boeing's activities. These three species are: the northern fur seal, Guadalupe fur seal (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*). Northern elephant seals may occur on VAFB but do not haul out in the harbor area. Northern fur seals, Guadalupe fur seals, and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski *et al.* (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). NMFS Stock Assessments can be viewed at: *http://www.NMFS.noaa.gov/pr/PR2/Stock__Assessment__Program/sars.html*.Please refer to those documents for information on these species.

Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* and off-loading operations, dredging, and kelp habitat mitigation, as well as the increased presence of personnel, may cause short-term disturbance to harbor seals and California sea lions hauled out along the beach and rocks in the vicinity of the south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during Boeing's activities, sound level intensity decreases proportional to the square root of the distance from the source. A dredging crane at the end of the dock producing 88 dBA of noise would still be noisy (approximately 72 dBA) at the nearest beach or the end of the breakwater, roughly 250 ft (76.2 m) away. The Elevating Platform Transporter (EPT) produces approximately 85 dBA, measured less than 20 ft (6 m) from the engine exhaust, when the engine is running at mid speed. The EPT operation procedure requires two short beeps of the horn (approximately 1/3 of a second each) prior to starting the ignition. Sound level measurements for the horn ranged from 84 to 112 dBA at 25 ft (7.6 m) away and 62 to 70 dBA at 200 ft (61 m) away. The highest measurement was taken from the side of the vehicle where the horn is mounted.

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a "looming'' visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the elevating platform transporter during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a "looming'' visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site.

Under the MMPA, if harbor activities disrupt the behavioral patterns of harbor seals, these activities would take marine mammals by Level B harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to result in disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and would not cause serious injury or mortality to marine mammals.

On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may rise to the level of level B harassment and could even result in injury of individuals. In addition, such large-scale movements by dense aggregations of marine mammals or on pupping sites could potentially lead to takes by serious injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor, because on average the number of harbor seals hauled out near the site on average is less than 30 and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes.

According to the June 2002 dock modification construction report, the maximum number of harbor seals hauled out each day ranged from 23 to 25 animals. There were 15 occasions in which construction noise, vehicle noise, or noise from a fishing boat caused the seals to lift their heads. Flushing only occurred due to fishing activities which were unrelated to the construction activities. The sea lions were less reactive to the construction noise than the harbor seals. None of the construction activities caused any of the sea lions to leave the jetty rocks and there was only one incident of a head alert reaction.

The report from the December 2002 dredging activities show that the number of Pacific harbor seals ranged from 0 to 19 and that California sea lions did not haul out during the monitoring period. On 10 occasions, harbor seals showed head alerts although two of the alerts were for disturbances that were not related to the project. No harbor seals flushed during the activities on the dock.

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application and ENSR International's 2001 Final Environmental Assessment. Information in the application and referenced sources is preliminarily adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Harassed

Boeing estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 21 seals sighted when tidal conditions were favorable during previous dredging operations in the harbor. Considering the maximum and average number of seals hauled out per day, assuming that the seals may be seen more than once, and using a maximum total of 83 operating days in 2004–2005, NMFS estimates that 145 to 623 Pacific harbor seals may be subject to Level B harassment.

During wharf modification activities, a maximum of 6 California sea lions were seen hauling out in a single day, averaging between 1 and 6 sea lions each day. Based on its own calculations, NMFS believes that a total of 100 California sea lions, 10 northern elephant seals, and 5 northern fur seals may be subject to Level B harassment, because they may be in nearby waters.

Possible Effects of Activities on Marine Mammal Habitat

Boeing anticipates no loss or modification to the habitat used by Pacific harbor seals or California sea lions that haul out near the south VAFB harbor. The harbor seal and sea lion haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals or California sea lions in the area to reproduce.

Boeing does anticipate unavoidable kelp removal during dredging. This habitat modification will not affect the marine mammal habitat. However, Boeing will mitigate for the removal of kelp habitat by placing 150 tons (136078 kg) of rocky substrate in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the Army Corps of Engineers following the 1984 and 1989 dredging. A lush kelp bed adjacent to the sandy area has developed from the efforts. The substrate will consist of approximately 150 sharp-faced boulders, each with a diameter of about 2 ft (0.61 m) and each weighing about 1 ton (907 kg). The boulders will be brought in by truck from an off-site quarry and loaded by crane onto a small barge at the wharf. The barge is towed by a tugboat to a location along the mooring dolphins from which a small barge-mounted crane can place them into the sandy area. Boeing plans to perform the reef enhancement in conjunction with the next maintenance dredging event in order to minimize cost and disturbances to animals. Noise will be generated by the trucks delivering the boulders to the harbor and during the operation of unloading the boulders onto the barges and into the water.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals in California waters, and, thus, there are no anticipated effects on subsistence needs.

Mitigation

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling harbor seals at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while harbor seals are present.

(4) If activities cease for longer than 30 minutes and harbor seals are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of Boeing's activities (see Monitoring).

(6) The *Delta Mariner* and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks and the vessel will reduce speed 1.5 to 2 knots (1.5–2.0 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and dolphins at less than 0.75 knot (1.4 km/hr).

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

Monitoring

As part of its 2002 application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS proposes the same plan for this IHA.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS within 90 days. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In addition, the report will include information on the weather, the tidal state, the horizontal visibility, and the composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, this will be reported to NMFS immediately.

Endangered Species Act (ESA)

This action will not affect species listed under the Endangered Species Act (ESA) that are under the jurisdiction of NMFS. VAFB formally consulted with U.S. Fish and Wildlife Service (FWS) in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was issued in August 2001. FWS recognized that Boeing will restore sea otter habitat (i.e., kelp beds) in the vicinity of the harbor to replace kelp destroyed during dredging and stated that there would not be takes of southern sea otters. In addition, the FWS noting that VAFB has committed to a southern sea otter monitoring program designed to detect the presence and possible disturbance at the VAFB harbor area during dredging activities (see 68 FR 36540, June 18, 2003).

NEPA

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has determined based on the content and analysis of Boeing's request for an IHA, and the Final Environmental Assessment for Harbor Activities Associated with the Delta IV Program at VAFB (ENSRI, 2001) that the proposed issuance of this IHA to Boeing by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Impacts are not expected to be outside the scope of that EA. Therefore, this action meets the definition of a "Categorical Exclusion'' as defined under NOAA Administrative Order 216–6 and is exempted from further environmental review.

Preliminary Conclusions

NMFS proposes to issue an IHA to Boeing for harbor activities related to the Delta IV/EELV to take place at south VAFB over a 1–year period. The proposal to issue this IHA is contingent upon adherence upon the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation will result in the harassment of only small numbers of Pacific harbor seals, California sea lions and northern elephant seals; would have a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses. Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and, therefore, will not be affected. While behavioral modifications may be made by these species to avoid the resultant acoustic and visual stimuli, there is no potential for large-scale movements, such as stampedes, since harbor seals, California sea lions, and northern elephant seals haul out in small numbers near the site (maximum number of harbor seals hauled out in 1 day estimated at 43 seals, averaging at 21 seals per day, maximum number of California sea lions hauled out in one day is estimated at six). The effects of Boeing's harbor activities are expected to be limited to short-term and localized behavioral changes.

Due to the localized nature of these activities, the number of marine mammals potentially taken by harassment are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels expected at the site. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**). Prior to submitting comments, NMFS recommends readers review NMFS' responses to those comments on this activity submitted previously (see 67 FR 63151, May 23, 2002, 68 FR 36540).

Dated: March 31, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–7817 Filed 4–6–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032404C]

Marine Mammals; File Nos. 808–1735, 1036–1744, 1058–1733, 948–1692, and 605–1607

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

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that the following individuals have applied in due form for permits or permit amendments to conduct scientific research on marine mammals: Dr. Andrew Read, Duke University Marine Laboratory, Beaufort, North Carolina 28516 (File No. 808–1735); Robert DiGiovanni, Riverhead Foundation for Marine Research and Preservation, 467 East Main Street, Riverhead, New York 11901 (File No. 1036–1744); Dr. Mark Baumgartner, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543 (File No. 1058–1733); Dr. Ann Pabst, University of North Carolina at Wilmington, 601 South College Road, Wilmington, North Carolina 28403 (File No. 948–1692); and Mason Weinrich, Whale Center of New England, Gloucester, Massachusetts 01931 (Permit No. 605–1607–01).

DATES: Written, telefaxed, or e-mail comments must be received on or before May 7, 2004.

ADDRESSES: The applications and related documents are available for review upon request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-

West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

File Nos. 1058–1733, 1036–1744, 948–1692, and Permit No. 605–1607–01: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

File No. 948–1692 and Permit No. 605–1607–01: Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320; and

File Nos. 1058–1733 and 808–1735: Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile to (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Additionally, comments may be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include the appropriate File No. (808–1735, 1036–1744, 1058–1733, 948–1692, or 605–1607) as a document identifier in the subject line of the e-mail comment.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams, Jill Lewandowski or Carrie Hubard at (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permits and permit amendment are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

File No. 808–1735: The applicant requests a 5–year permit for suction cup attachment of data logging tags to humpback (*Megaptera novaeangliae*), minke (*Balaenoptera acutorostrata*), fin (*B. physalus*), sei (*B. borealis*) and blue (*B. musculus*) whales to examine their foraging behavior relative to krill patches in waters surrounding Antarctica.

File No. 1036–1744: The applicant requests a 5–year permit to conduct aerial surveys to assess seasonal abundance and distribution of the North Atlantic right whale (*Eubalaena glacialis*) and other marine mammals in the New York Bight and surrounding waters, which will enhance the survey work performed by the NMFS Northeast Fisheries Science Center's Sighting Advisory System.

File No. 1058–1733: The applicant requests a 5–year permit for suction cup attachment of data logging tags to right whales in the North Atlantic and to blue, fin, humpback, sei, and Antarctic minke (*B. bonaerensis*) whales in the Southern Ocean to study diving and foraging behavior. The primary objectives are to: (1) develop a predictive model of right whale distribution; (2) determine overlap between right whale diving behavior and vertical structure of nearby fixed fishing gear; and (3) to understand trophic interactions between baleen whales and Antarctic krill and document the effect of whale predation on krill patch size and structure.

File No. 948–1692: The applicant requests a 5–year permit to investigate the distributions of North Atlantic right whales and humpback whales in mid-Atlantic waters using aerial and vessel-based surveys. These surveys will assist in understanding the seasonal distribution of these whales in Mid-Atlantic waters.

Permit No. 605–1607–01: Permit No. 605–1607–01, issued on June 11, 2001 (66 FR 32794) and which expires on June 30, 2006, currently authorizes the holder to assess the health, status, and trends of humpback, fin, sei, and North Atlantic right whales off the U.S. Atlantic coast from southern Maine to northern Florida through photo-identification, remote biopsy sampling, and attachment of time-depth recorders, VHF tags, and Crittercams The permit holder requests an amendment to increase the number of humpback and fin whales that can be suction cup tagged from 10 per year per species to 25 per year per species, and to increase the number of approaches/attempts per tag from 2 per animal to 5 per animal. The purpose of the suction cup mounted data logging tags is to study underwater behavior of the whales on their feeding grounds in New England waters and to gather information about noise levels and whale responses to vessel noise and vessel approaches.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 31, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–7818 Filed 4–6–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033104C]

Availability of the Draft Guidelines for the Climate Change Science Program Synthesis and Assessment Products

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for public comment.

SUMMARY: The United States Climate Change Science Program (CCSP) is announcing the availability of the Draft Guidelines for the CCSP Synthesis and Assessment Products, which are described in the Strategic Plan for the U.S. Climate Change Science Program (*http://www.climatescience.gov/Library/stratplan2003/final/default.htm*). The synthesis and assessment products are intended to provide useful information for a variety of users about key climate change topics. The products include reports, data sets, and evaluations of the uses and limits of climate information for decisionmaking. See Chapter 2 of the Strategic Plan for the U.S. Climate Change Science Program for a detailed description of the products.

Your comments are requested on the effectiveness of the proposed guidelines for (1) ensuring scientific integrity and (2)facilitating public involvement in the products. All comments should be sent electronically to *comments@climatescience.gov*. Please refer to the instructions for formatting and submitting comments (*http://www.climatescience.gov/Library/sap/sap-reviewinstructions.htm*) to facilitate the collation of comments received into a master set for review by the CCSP.

DATES: Comments must be received by May 7, 2004. The comments received by this date will be posted on the CCSP web site.

ADDRESSES: The Draft Guidelines for the CCSP Synthesis and Assessment Products are available on the CCSP web

site at *http://www.climatescience.gov/Library/sap/sap-guidelines–29mar2004.pdf*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy MacCracken, 1–202–419–3483 (voice), U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave., N.W., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

CCSP Products and Guidelines

The Climate Change Science Program is an interagency endeavor, with 13 participating Federal agencies and departments. One or more of the agencies that comprise CCSP will have the lead responsibility for preparing each product. The topic of the product, lead and supporting agencies, and time frame for producing the product are listed in a table available at *http://www.climatescience.gov/Library/sap/sap-summary.htm*. This table also provides information regarding which CCSP interagency working groups are collaborating in the production of each product. The national and international research community is anticipated to play a major role in preparation of many of the products.

To ensure consistency and transparency in the processes that will be used by the lead and supporting CCSP agencies in preparing the products, the guidelines currently under review describe the steps to be followed in each of four phases of the preparation process—framing, drafting, review, and production. This product development will facilitate involvement of the research community and the public in ensuring that the products meet the highest standards of scientific excellence. The guidelines also encourage transparency by ensuring that public information about the status of the products will be provided on the CCSP web site (*http://www.climatescience.gov*).

Dated: April 1, 2004.

James R. Mahoney,

Assistant Secretary of Commerce for Oceans and Atmosphere and Director, U.S. Climate Change Science Program.

[FR Doc. 04–7902 Filed 4–6–04; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 7, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: ED Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 31, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: 2005 National Household Education Surveys Program (NHES: 2005).

Frequency: One-time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 2,350; Burden Hours: 302.

Abstract: NHES: 2005 is a survey of households using random-digit-dialing and computer-assisted telephone interviewing. Three topical surveys are to be conducted in NHES: 2005: Early Childhood Program Participation (ECPP), After-School Programs and Activities (ASPA), and Adult Education and Lifelong Learning (AELL). ECPP and ASPA will provide current measures of participation in early childhood education, after-school programs, and other forms of non-parental care, as well as in-home and out-of-home activities. AELL will provide in-depth information on the participation of adults in a wide range of training and education activities.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections'' link and by clicking on link number 2444. When you access the information collection, click on "Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–7827 Filed 4–6–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 7, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 2, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Innovation and Improvement

Type of Review: Reinstatement.

Title: Parental Information and Resource Center Annual and Final Performance Report.

Frequency: Annually; on-going.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 84;

Burden Hours: 250.

Abstract: Recipients of grants under the Parental Information and Resource Center Program must submit an annual performance report that establishes substantial progress toward meeting their project objectives to receive a continuation award.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections'' link and by clicking on link number 2423. When you access the information collection, click on "Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–7859 Filed 4–6–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 7, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 2, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: The Evaluation of Exchange, Language, International and Area Studies (EELIAS), NRC, FLAS, IIPP, UISFUL, BIE, CIBE, AORC, Language Resource Centers (LRC), International Studies and Research (IRS), Fulbright-Hays Faculty Research Abroad (FRA), Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA), Fulbright-Hays Seminars Abroad (SA), Fulbright-Hays Group Projects Abroad (GPA), and the Technology Innovation and Cooperation for Foreign Information Access (TICFIA) Programs.

Frequency: Annually; twice—FLAS.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,595;

Burden Hours: 30,770.

Abstract: LRC, IRS, FRA, DDRA, SA, GPA, and TICFIA are being added for clearance to the system that already contains seven other programs. This Information collection will assist the International Education Program Service (IEPS) in meeting program planning and evaluation requirements. Program officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continuation funding from the Department of Education.

Requests for copies of the proposed information collection request may be

accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections'' link and by clicking on link number 2500. When you access the information collection, click on "Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–7860 Filed 4–6–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 7, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 2, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Characteristics of High-Performing Local Adult Education Programs.

Frequency: Other.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 288;

Burden Hours: 396.

Abstract: Site visits to selected high-performing sites to observe characteristics of operations and relations with one stop partners.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections'' link and by clicking on link number 2497. When you access the information collection, click on "Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–7861 Filed 4–6–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.293B]

Foreign Language Assistance Program (Local Educational Agencies)

AGENCY: Office of English Language Acquisition, Department of Education.

ACTION: Notice of intent to fund down the grant slate for the Foreign Language Assistance program.

SUMMARY: The Secretary intends to use the grant slate developed for the Foreign Language Assistance program in Fiscal Year (FY) 2003 to make new grant awards in FY 2004. The Secretary takes this action because a significant number of high-quality applications remain on the last year's grant slate and limited funding is available for new grant awards in FY 2004.

FOR FURTHER INFORMATION CONTACT: Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., room 5617, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9717 or via Internet: *rebecca.richey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

On May 9, 2003, we published a notice in the **Federal Register** (68 FR 24978) inviting applications for new awards under the Foreign Language Assistance program. This notice indicated that the selection criteria, competitive preference priorities, and application requirements contained in the notice would apply to the FY 2003 grant competition only.

We received a significant number of applications for grants under the Foreign Language Assistance program in

FY 2003 and made 74 new grants. Because such a large number of high-quality applications were received, many applications that were awarded high scores by peer reviewers did not receive funding last year.

Limited funding is available for new awards under this program in FY 2004. In order to conserve funding that would have been required for a peer review of new applications submitted under the program, we intend to select grantees in FY 2004 from the existing slate of applicants. This slate was developed during the FY 2003 competition using the selection criteria, competitive preference priorities, and application requirements included in the May 9, 2003 notice. No changes to selection criteria, competitive preference priorities, or application requirements will be required by this action.

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/news/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.*

Program Authority: 20 U.S.C. 7259–7259b.

Dated: April 1, 2004.

Marina Tse,

Principal Associate Deputy Under Secretary, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

[FR Doc. 04–7893 Filed 4–6–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA 84.060A]

Indian Education Formula Grants Program

AGENCY: Office of Indian Education, Education.

ACTION: Indian education formula grants to local education agencies—notice inviting applications for fiscal year (FY) 2004.

Purpose: The Indian Education Formula Grant Program provides grants to support local educational agencies (LEAs) and other eligible entities (described elsewhere in this notice) in their efforts to reform and improve elementary and secondary school programs that serve Indian students. The programs funded are to be based on challenging State academic content and student academic achievement standards used for all students, and be designed to assist Indian students to meet those standards. Section 7116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) also authorizes, upon the Secretary's receipt of an acceptable plan for the integration of education and related services, the consolidation of funds for any Federal program exclusively serving Indian children, or the funds reserved under any Federal program to exclusively serve Indian children, that are awarded under a statutory or administrative formula, for the purposes of providing education and related services that would be used to serve Indian students. Instructions for submitting an integration of services plan are included in the application package.

Eligible Applicants: LEAs, certain schools funded by the Bureau of Indian Affairs and Indian tribes under certain conditions, as prescribed by section 7112(c) of the ESEA.

Deadline for Transmittal of Applications: May 10, 2004. Applications not meeting the deadline will not be considered for funding in the initial allocation of awards. However, if funds become available after the initial allocation of funds, applications not meting the deadline *may* be considered for funding if the Secretary determines, under section 7118(d) of the ESEA, that reallocation of those funds to applicants filing after the deadline would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, may be less than the applicant would have received had the application been submitted on time.

Deadline for Intergovernmental Review: July 9, 2004.

Application Available: April 8, 2004.

Available Funds: The appropriation for this program for fiscal year 2004 is approximately $95,932,638.

Estimated Range of Awards: $4,000 to $2,215,000.

Estimated Average Size of Awards: $80,144.

Estimated Number of Awards: 1,197.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months for new applications.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

For Applications or Information Contact: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W11, Washington, DC. 20202–6335. Telephone: (202) 260–3774. An electronic version of the application is available at: *http://www.ed.gov/about/offices/list/ous/oie/index.html.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the person listed in this preceding paragraph.

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting the person listed in this paragraph.

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 Abode Portable Document Formal (PDF) on the Internet at the following site: *http://www.ed.gov/news/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 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 **Fedeal Register.** Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7421.

Dated: April 1, 2004.

Victoria Vasques,

Deputy Under Secretary and Director for Indian Education.

[FR Doc. 04–7895 Filed 4–6–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–2–000]

The Peoples Gas Light and Coke Company; Notice Shortening Answer Period

March 31, 2004.

On March 26, 2004, the Peoples Gas Light and Coke Company filed a proposed Stipulation and Agreement (Settlement), in the above-docketed proceeding. By this notice, the period for the filing of initial comments to the Settlement is hereby shortened, to and including April 2, 2004. Reply comments shall be filed on or before April 7, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–773 Filed 4–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–485–000]

R.E. Ginna Nuclear Power Plant, LLC; Notice of Issuance of Order

March 24, 2004.

R.E. Ginna Nuclear Power Plant, LLC (GNNP) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity, energy and ancillary services at market-based rates. GNNP also requested waiver of various Commission regulations. In particular, GNNP requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the GNNP.

On March 24, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by GNNP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 23, 2004.

Absent a request to be heard in opposition by the deadline above, GNNP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of GNNP, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of GNNP's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–772 Filed 4–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–90–000]

Wyoming Interstate Company, Ltd.; Notice of Application

March 31, 2004.

Take notice that on March 29, 2004, Wyoming Interstate Company, Ltd. (WIC), P.O. Box 1087, Colorado Springs, Colorado, 80944, filed in Docket No. CP04–90–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to (i) construct and operate new compression, metering and supply lateral facilities, with appurtenances, located in Carbon and Sweetwater Counties, Wyoming, and (ii) implement an incremental rate and fuel charge related to recover the costs of the subject facilities, at an estimated cost of $11,558,100. WIC states that the proposed facilities are designed to receive and transport up to 116,000 Dth/d from the Williams Field Services gas processing plant located in Sweetwater County, Wyoming, to an interconnect with WIC's mainline in Carbon County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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 "e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Wyoming Interstate Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3788 or by fax at (719) 667–7534.

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 shown below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing

comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: April 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–774 Filed 4–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–82–000, et al.]

Onondaga Cogeneration Limited, et al.; Electric Rate and Corporate Filings

March 31, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Onondaga Cogeneration Limited Partnership and Teton Power Funding, LLC

[Docket Nos. EC04–82–000 and ER00–895–004]

Take notice that on March 25, 2004, Onondaga Cogeneration Limited Partnership (Onondaga) and Teton Power Funding, LLC (Teton) (collectively, Applicants) filed with the Commission an application pursuant to section 203 of the Federal Power Act, request for expedited treatment, and notice of change in status with respect to the transfer of indirect upstream ownership interests in Onondaga to Teton Power Holdings, LLC (Holdings), a newly-formed limited liability company to be owned by Caithness Energy, L.L.C. (Caithness) either directly or indirectly through one or more wholly-owned subsidiaries, ArcLight Energy Partners Fund I, L.P. (ArcLight Fund I), and ArcLight Energy Partners Fund II, L.P. (ArcLight Fund II). The Applicants state that, in addition, as a result of an internal corporate reorganization, an intermediate holding company wholly-owned by ArcLight Fund I and ArcLight Fund II simultaneously will be merged into Teton. Applicants have requested privileged treatment of the contents of *Exhibit B* and *Exhibit I* to the section 203 application.

Comment Date: April 14, 2004.

2. Aquila, Inc. and Aquila Long Term, Inc.

[Docket No. EC04–83–000]

Take notice that on March 26, 2004, Aquila, Inc. and Aquila Long Term, Inc. (Applicants), filed with the Commission an application pursuant to section 203 of the Federal Power Act and section 33 of the Commission's regulations for approval of the transfer of two power sales agreements to Tor Power, LLC. Applicants requests that the Commission approve the Application within thirty days of filing.

Comment Date: April 16, 2004

3. LaPaloma Generating Company LLC, LaPaloma Generating Trust Ltd., and LaPaloma Holding Company LLC

[Docket No. EC04–84–000]

Take notice that on March 26, 2004, La Paloma Generating Trust Ltd. and La Paloma Generating Company, LLC (together, the La Paloma Parties) and La Paloma Holding Company LLC filed with the Commission an application pursuant to Section 203 of the Federal Power Act for authorization to transfer certain jurisdictional facilities held by the La Paloma Parties to the lenders, interest hedge providers and investors of the La Paloma Parties. La Paloma Parties seek expedited review of the application and request confidential treatment of certain documents submitted therewith.

LaPaloma Parties states that a copy of the application was served upon the California Public Utilities Commission.

Comment Date: April 16, 2004.

4. United States Department of Energy and Western Area Power Administration

[Docket No. EF04–5041–000]

Take notice that on March 23, 2004, the Deputy Secretary of the Department of Energy, filed notification that by Western Area Power Administration, Desert Southwest Customer Service Region-Rate Order No. WAPA–112, the existing Rates Schedules DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, DSW–SUR1, PD–NTS1, AND INT–NTS1 for the Desert Southwest Customer Service Region network integration transmission services for the Parker-Davis Project and the Pacific Northwest-Pacific Southwest Intertie Project and ancillary services for the Western Area Lower Colorado control area were extended through March 31, 2005.

Comment Date: April 13, 2004.

5. PJM Interconnection, L.L.C.

[Docket No. ER04–676–000]

Take notice that on March 26, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed construction service agreement (CSA) among PJM; Industrial Power Generating Corporation, and Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all three doing business as Allegheny Power. PJM requests a waiver of the Commission's 60-day notice requirement to permit a March 12, 2004 effective date for the CSA.

PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: April 16, 2004.

6. NorthPoint Energy Solutions, Inc.

[Docket No. ER04–678–000]

Take notice that on March 26, 2004, NorthPoint Energy Solutions, Inc. (NorthPoint) submitted a Wholesale Cost-Based Rate Tariff (Tariff) providing for sales of capacity and energy pursuant to the Mid-Continent Energy Marketers Association Capacity and Energy Tariff, FERC Electric Tariff and the Western Systems Power Pool, Inc. Agreement. NorthPoint requests that the proposed Tariff be effective June 1, 2004.

Comment Date: April 16, 2004.

7. Tenaska Virginia Partners, L.P.

[Docket No. ER04–680–000]

Take notice that on March 26, 2004, Tenaska Virginia Partners, L.P., (Tenaska Virginia) submitted for filing, pursuant to Section 205 of the Federal

Power Act (16 U.S.C. 824d), and part 35 of the Commission's regulations (18 CFR part 35), a rate schedule for reactive power to be provided initially to the Virginia Electric and Power Company d/b/a Dominion Virginia Power (VEPCO) transmission system, and upon VEPCO and Tenaska Virginia joining the PJM Interconnection, L.L.C. (PJM), to the PJM transmission system. Tenaska Virginia requests an effective date of May 1, 2004.

Comment Date: April 16, 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. E4–771 Filed 4–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

March 31, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2210–102.

c. *Date Filed:* March 8, 2004.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r), 799, and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2441

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov.*

j. *Deadline for filing comments and or motions:* May 3, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–102) on any comments or motions filed. 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 at *http://www.ferc.gov* under the "e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* APC is requesting approval to modify a previously approved non-project use of project lands. This approval, issued on September 15, 2003, allows Willard Construction of Roanoke Valley, Inc. (permittee) to construct four stationary docks with a total of 48 boat slips and eight floating slips at an area known as South Pointe Condominiums at The Waterfront. The permittee now proposes to relocate one of the stationary docks from the cove to the main channel.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room, 888 First Street, NE., room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS'', "RECOMMENDATIONS FOR TERMS AND CONDITIONS'', "PROTEST'', OR "MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. Copies of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–775 Filed 4–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

March 31, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2608–028.

c. *Date Filed:* March 3, 2004, supplemented March 18, 2004.

d. *Applicants:* FiberMark North America, Inc. (FiberMark/Transferor) and A & D Hydro, Inc. (A & D/Transferee).

e. *Name of Project:* West Springfield.

f. *Location:* On the Westfield River, in Hampden County, Massachusetts. The project does not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Bruce Moore, FiberMark North America, Inc., 161 Wellington Road, Brattleboro, VT 05301, (802) 257–5902 (Transferor); Thomas Tarpey, A & D Hydro, Inc., 55 Union Street, 4th Floor, Boston, MA 02108, (617) 367–0032 (Transferee).

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* May 3, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–2608–028) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* FiberMark and A & D jointly seek Commission approval to transfer the license for the West Springfield Hydroelectric Project No. 2608 from FiberMark to A & D. The application also seeks approval of the already-completed transfer from the original licensee, FiberMark DSI, Inc. (DSI), to FiberMark. The application states that on December 31, 2002, FiberMark acquired all of the assets of DSI (which as a result has been dissolved and has ceased to exist), but FiberMark and DSI inadvertently failed to seek prior Commission approval of their transfer.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS'', "PROTEST'', OR "MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–776 Filed 4–6–04; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

April 1, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Partial Transfer of License.

b. *Project No:* 3021–086.

c. *Date Filed:* March 17, 2004.

d. *Applicants:* Allegheny Hydro No. 8, L.P., Allegheny Hydro No. 9, L.P. (Allegheny Hydro 8 and 9), and, each solely in its capacity as the owner trustee for the project, Fleet National Bank (formerly The Connecticut National Bank) (Fleet), State Street Bank and Trust Company (State Street) and U.S. Bank National Association (U.S. Bank).

e. *Name and Location of Project:* The Allegheny River Lock and Dam Nos. 8 and 9 Hydroelectric Project is located at the U.S. Army Corps of Engineers' Allegheny River Lock and Dam No. 8 and Allegheny River Lock and Dam No. 9 on the Allegheny River in Armstrong County, Pennsylvania.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For Allegheny Hydro 8 and 9: David L. Schwartz, Latham & Watkins LLP, Suite 1000, 555 Eleventh Street, NW., Washington, DC 20004–1304. (202) 637–2125. For Fleet, State Street, and U.S. Bank: Thomas F. Steichen, U.S. Bank National Association, West Side Flats Center, EP–MN–WS4L, 60 Livingston Avenue, St. Paul, MN 55107.

h. *FERC Contact:* James Hunter, (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* May 3, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–3021–086) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners

filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Applicants state that, in June 1997, State Street purchased Fleet's interest in the project as owner-trustee and, in January 2003, U.S. Bank purchased State Street's interest. Applicants now seek after-the-fact approval of the two purchases and the substitution of State Street for Fleet and U.S. Bank for State Street as co-licensee, each solely in its capacity as owner trustee.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS'' link. Enter the docket number (P–3021) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS'', "PROTEST'', OR "MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–777 Filed 4–6–04; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04-5-000]

Technical Conference on Northeast Energy Infrastructure; Notice of Conference

April 1, 2004.

The Federal Energy Regulatory Commission (FERC) will hold a conference on energy infrastructure issues in the northeastern states on Thursday, June 3, 2004, at the Hilton New York, 1335 Avenue of the Americas, New York, NY.

The conference is for the purpose of further exploring the adequacy and development of the electric, natural gas, and other energy infrastructure in the Northeast. This region includes Maine, Vermont, New Hampshire, New York, Massachusetts, Connecticut, and Rhode Island. In addition to expert panelists, Governors, state utility commissioners, other elected officials of the northeastern states and international representatives from neighboring Canada are being invited to participate. The goal is to identify the current state of infrastructure in the Northeast, present and future infrastructure needs, and the means and barriers to fulfilling those needs. We look forward to an informative discussion of the issues to clarify how we can facilitate and enhance a comprehensive collaborative approach to energy infrastructure development for the northeastern states. It is becoming increasingly clear that a well-functioning infrastructure is necessary to meet America's energy demands and sustain workable, competitive markets.

The meeting will begin at 9:30 a.m. and conclude at 5 p.m. All interested parties are invited to attend. Hotel rooms have been blocked at the Hilton New York under the code ≥Northeast Infrastructure Conference≥ for any attending guests to reserve a one- or two-night stay, but will be released by May 3, 2004. You can still reserve a room after that date, but on a room- and rate-availability basis. Reservations for hotel rooms can be made by calling 1-212-586-7000 or 1-800-HILTONS.

To attend, please register online on the Commission Web site at *http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=896&CalType=%20&Date=6%2f3%2f2004&CalendarID=0*. There is no registration fee. We will issue further details on the conference, including the agenda and a list of panelists, as plans evolve. For additional information, please contact Carol Connors in the Office of External Affairs at *carol.connors@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–779 Filed 4–6–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF04–6–000]

Questar Pipeline Company; Notice of Site Visit

March 31, 2004.

On Tuesday, April 13, 2004, the staff of the Federal Energy Regulatory Commission (FERC) will conduct a site visit of Questar Pipeline Company's (Questar) Southern System Expansion Project located near the City of Price, Utah. We will meet at 8 a.m. at the Holiday Inn, 838 Westwood Blvd., Price, Utah. Interested persons may attend, but must provide their own transportation.

For additional information about the site visit, please contact the FERC's Office of External Affairs at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. E4–778 Filed 4–6–04; 8:45 a.m.]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0096; FRL–7351–7]

The Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group; Working Committee on Water Quality and Pesticide Disposal; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG); Working Committee on Water Quality and Pesticide Disposal (WC/WQPD), will hold a 2–day meeting, beginning on April 26, 2004, and ending April 27, 2004. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, April 26, 2004, from 8:30 a.m. to 5 p.m., and on Tuesday, April 27, 2004, from 8:30 a.m. to noon.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 300 Army Navy Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov*.

Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax number: (802) 472–6957; e-mail address: *aapco@plainfield.bypass.com*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. All persons are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

- Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0096. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

II. Tentative Agenda

This unit provides the tentative agenda for the meeting.

1. Committee review of WQ/DP issue papers.

a. Response letter to shallow ground water definition.

b. Surface water monitoring support/ funding (Minnesota).

2. National Pesticide Surveillance Alliance (NPSA) pilot project presentations (part 1 and part 2).

3. A 2005–2007 cooperative grant guidance presentation and discussion.

4. Label review manual and disposal language issue team report.

5. Registrations review SOP status and handling of CBI.

6. United States Geological Survey (USGS) InterAgency grant update and State cooperative projects.

7. Open forum.

8. Atrazine IRED presentation.

9. State reports and Florida metals investigation report.

10. Endangered species and surface water.

11. Office of Pesticide Programs and the Office of Water risk assessment methods.

12. EPA update/briefing.

a. Office of Pesticide Programs update.

b. Office of Enforcement Compliance Assurance update.

List of Subjects

Environmental protection.

Dated: March 24, 2004.

Jay S. Ellenberger,

Associate Director, Field External Affairs Division, Office of Pesticide Programs.

[FR Doc. 04–7477 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0397; FRL–7350–9]

Molinate; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, the Agency is issuing a cancellation order announcing its approval of the requests submitted by Syngenta Crop Protection Inc., and Helm Agro U.S. Inc., to amend and voluntarily cancel the registrations of all of their products containing S-ethyl hexahydro-1H-azepine-1-carbothioate (molinate) effective June 30, 2008. Any distribution, sale or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review

and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8025; fax number: (703) 308–8041; e-mail address: *livingston.wilhelmena@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–2003–0397. 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), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202–4501. 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, access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces that EPA is approving the cancellation order requests, from Syngenta Crop Protection Inc., and Helm Agro U.S. Inc., to cancel the registration of 14 pesticide products registered under section 3 or 24(c) of FIFRA. These 14 registrations constitute all registrations held by Syngenta Crop Protection Inc., and Helm Agro U.S. Inc., of products containing S-ethyl hexahydro-1H-azepine-1-carbothioate (molinate). These requests are submitted pursuant to section 6(f) of FIFRA. In addition, EPA is approving requests from Syngenta Crop Protection Inc., and Helm Agro U.S. to amend the registrations for these products for the time period prior to their cancellation.

On June 2, 2003, Syngenta Crop Protection Inc., and on August 7, 2003, Helm Agro U.S. Inc., submitted a letter to EPA requesting cancellation, effective June 30, 2008, of the registrations of all their molinate products, and to modify the terms and conditions of its molinate registration until the cancellation is effective. This order follows up a **Federal Register** notice of September 17, 2003 (68 FR 54451) (FRL–7324–7), announcing receipt of written requests by Syngenta Crop Protection Inc., and Helm Agro U.S., Inc., to voluntarily cancel their molinate product registrations. Syngenta and Helm also requested that the Administrator waive the 180–day waiting period under FIFRA section 6(f)(1)(C)(ii).

Molinate is a thiocarbamate herbicide registered for use primarily for the control of water grass in rice. Rice is grown in California and the south central/south eastern states of Arkansas, Louisiana, Missouri, Tennessee, and Texas. The registrations subject to the requests for cancellation are listed by registration number in Table 1 of this unit.

After considering comments received, EPA has decided to accept the voluntary cancellation requests. Accordingly, the Agency is issuing an Order in this Notice canceling the 14 registrations identified in Table 1.

TABLE 1.—APPROVED REGISTRATION CANCELLATIONS

Registration Number	Product Name	Chemical
100–981	Riceco Molinate Technical	Molinate
100–982	Riceco Touche	Molinate
100–983	Molinate 15G	Molinate
100–1021	Ordram 8–E An Emulsifiable Liquid Herbicide	Molinate
100–1036	Arrosolo 3–3E	Molinate
100–1039	Ordram 15–G	Molinate
100–1040	Ordram Technical Herbicide	Molinate
100–1102	Ordram 15–GM Rice Herbicide	Molinate
74530–7	Molinate Technical	Molinate
CA77015900	Ordram 8–E An Emulsifiable Liquid Herbicide	Molinate
CA84017200	Ordram 8–E An Emulsifiable Liquid Herbicide	Molinate
CA85005300	Ordram 8–E An Emulsifiable Liquid Herbicide	Molinate
TX81002600	Ordram 8–E Emulsifiable Liquid Herbicide	Molinate
TN93000700	Ordram 15–G	Molinate

Table 2 of this unit includes the name and address of record for the registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

Company Number	Company Name and Address
100	Syngenta Crop Protection, Inc. P.O. Box 18300 Greensboro, NC 27419–8300
74530	Helm Agro U.S., Inc. Nordkanalstrasse 28 D–20097 Hamburg, Germany

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations of molinate product registrations identified in Table 1 of this notice. Accordingly, the Agency orders that the molinate product registrations identified in Table 1 are hereby canceled as of June 30, 2008.

IV. Modification of the Terms and Conditions of the Molinate Registrations

The 2002 sales level of the molinate active ingredient will be the maximum amount that Syngenta and Helm will sell or distribute in 2004, 2005, and 2006. Syngenta and Helm may not sell or distribute any more than 75% of the 2002 sales levels in the year 2007, and sell or distribute more than 50% of the 2002 sales levels in the year 2008.

Syngenta and Helm will provide annual production/sales reports to the Agency beginning in the year 2004 through 2009. Syngenta and Helm will also provide inventory reports for the years 2007, 2008, and 2009. These reports will be submitted by September 30 of each year to the Agency's Chemical Review Manager for molinate.

Failure by either registrant to comply with the sale or distribution limits contained in the molinate registration constitutes grounds for immediate cancellation of the registration without opportunity for a hearing.

V. 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 registration be canceled. FIFRA further provides that before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

VI. What Comments Did the Agency Receive?

EPA received two sets of comments on the voluntary cancellation requests for molinate products during the comment period. The commenters, Pesticide Action Network North America (PANNA) and Natural Resource and Defense Council (NRDC) strongly support the cancellation of molinate, but are concerned that the proposed phase-out is too long and will permit ongoing environmental and human health harm for many years. Further, they were concerned that the Agency is not requiring risk mitigation during the phase-out period to address exposure to molinate in ambient air.

EPA believes the voluntary agreement achieves more timely risk mitigation then would have been achieved through a regulatory process. In addition, under FIFRA, where the Agency must look at risks and benefits of a pesticide, it is not certain that the result of reregistration would have been cancellation. EPA's detailed responses to PANNA and NRDC comments may be found in the docket listed in Unit I.B1.

VII. 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 a registered pesticide product 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 order. The existing stocks provisions of this cancellation order are as follows:

The cancellation of these registrations has an effective date of June 30, 2008. After that date, Syngenta Crop Protection Inc., and Helm Agro U.S. Inc., may not sell or distribute any molinate products except as detailed in the cancellation order. Syngenta Crop Protection Inc., and Helm Agro U.S. Inc., will be permitted to distribute the molinate active ingredient in 2009 for the purposes of facilitating usage by August 31, 2009. No use of products containing molinate is permitted after the 2009 growing season (August 31, 2009).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 26, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–7868 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0058; FRL–7349–4]

Muscodor albus Strain QST 20799; Notice of Filing a Pesticide Petition to Establish an Exemption from Tolerance for a Certain Microbial Pesticide 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–2004–0058, must be received on or before May 7, 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: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@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. *EPA Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0058. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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 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–2004–0058. The system is an "anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0058. 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–2004–0058.

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–2004–0058. 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: March 22, 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 AgraQuest, Inc. 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.

AgraQuest, Inc.

PP 3F6745

EPA has received a pesticide petition (PP 3F6745) from AgraQuest, Inc., 1530 Drew Avenue, Davis, CA 95616, 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 exemption from the requirement of a tolerance for the microbial pesticide *Muscodor albus* strain QST 20799 in or on all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, AgraQuest, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by AgraQuest, Inc. 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.

A. Product Name and Proposed Use Practices

Muscodor albus strain QST 20799 will be the active ingredient in end-use products for soil treatment to control root diseases in greenhouse and field crops, as well as a fumigant to control post harvest decay in fresh fruits, vegetables and cut flowers. When activated with moisture, *Muscodor albus* strain QST 20799 produces volatile compounds that are lethal to plant pathogenic organisms that cause diseases such as root rot, damping-off and wilt. End-use product will be mixed with the soil, applied to seeds, bulbs and/or tubers prior to planting, or used to treat enclosed containers of postharvest fruits, vegetables and cut flowers.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues. Muscodor albus* strain QST 20799 is an endophytic fungus that was originally isolated from the bark of a cinnamon tree in Honduras. The strain grows as a white sterile mycelium and does not produce asexual or sexual spores, or other structures such as chlamydospores or sclerotia. *Muscodor albus* strain QST 20799 works to inhibit and kill microorganisms by production of a number of volatiles, mainly alcohols, acids, and esters. *Muscodor albus* strain QST 20799 will be the active ingredient in end-use products for soil treatment to control root diseases in greenhouse and field crops, as well as a biofumigant to control post harvest decay in fresh fruits, vegetables and cut flowers.

Muscodor albus strain QST 20799 works to inhibit and kill microorganisms by production of a number of volatiles, mainly alcohols, acids, and esters. Antifungal activity was found to be mainly associated with the production of 2-methyl-1-butanol, ethyl butyrate and isobutyric acid. Other compounds produced such as ethyl propionate, ethyl isobutyrate and methyl isobutyrate, although, less inhibitory, may also contribute to the antimicrobial activity. Many of these compounds are well known as natural constituents of fruit aromas, fresh leaves, wine and rum aromas, blue cheese aroma, other natural essential oils and olive and vegetable oil.

Volatiles produced by *Muscodor albus* strain QST 20799 have a fungicidal rather than a fungistatic action toward most fungi. Both vegetative hyphae and spores of plant pathogenic fungi are killed. The volatiles are also bactericidal against vegetative bacterial cells. Most *Muscodor albus* strain QST 20799 volatiles are non-polar and thus more likely to be absorbed or attach to the cell membrane, which is the first cellular component exposed after the cell wall. The disruption of cell membrane functions is a likely explanation for such a wide and unspecific activity. Damage to cell membrane components can cause loss of electrolytes, loss of osmotic balance and impair feeding functions. Damage to other cellular components is less likely, as they would require penetration of the cytoplasm and be more likely to have a more specific activity. Extensive work with crop plants has demonstrated that *Muscodor albus* strain QST 20799 will not establish on treated plants and does not represent a risk to non-target plants. The strain does not have spores or any other resting stage, and the volatiles it produces have been shown to dissipate rapidly in soil and water.

2. *Magnitude of residue at the time of harvest and method used to determine the residue*. Residues of the fungal active ingredient are not expected on food or feed items because the active ingredient will not be in direct contact with treated commodities. The volatile organic compounds produced by *Muscodor albus* strain QST 20799 were identified by GC-MS as follows: The most abundant compound was ethyl propionate followed by 3-methyl-1-butanol (or 2-methyl-1-butanol) and isobutyric acid, other compounds produced include ethyl butyrate, ethyl isobutyrate and methyl isobutyrate. Many of these compounds are well known as natural constituents of fruit aromas, fresh leaves, wine and rum aromas, blue cheese aroma, other natural essential oils and olive and vegetable oil. A comprehensive data base search was carried out to assess the reported toxicities of these compounds. Data bases include the registry of toxic effects of chemical substances (RTECS) and the hazardous substance data bank (HSDB).

During postharvest testing with fruit in the box, levels of volatile organic compounds were measured using 10 grams (10g) product in an 11.4L box. Exposure from such treatment is at concentrations well below reported lethal dose $(LD)_{50}$ levels for these volatile compounds. Further, the volatile compounds rapidly dissipate in soil and water. They are not expected to accumulate on food/feed commodities, nor to be above the background levels of these naturally occurring compounds. A system was set up to determine levels of volatile organic compounds remaining on apples after treatment. This demonstrated that after a 48–hour exposure of 10g Arabesque to apples in a 11.4 L box, only two volatile compounds could be detected in the rinsate of the apple skins. All others were not detectable. These two were at very low concentrations (2-methyl-1-butanol, 8 ppb and isobutyl alcohol, 10 ppb). These levels diminish even further after 24–hours aeration. The LD_{50} values reported for these compounds are 6 orders of magnitude higher than those observed right after exposure. Naturally occurring levels of the volatiles in foods are higher than those observed after treatment with Arabesque.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed*. Residues of the fungal active ingredient are not expected on food or feed items because the active ingredient, *Muscodor albus* strain QST 20799, will not be in direct contact with treated commodities. As discussed immediately above, residue levels of the fungus will be zero because the microorganism has limited survivability once its carrier nutrient source is exhausted. The volatiles are already found naturally occurring in foods such as apples, mushrooms, bananas, apricots, grapes, wine and beer. Many of the volatile organic compounds produced by Arabesque are certified natural flavors and fragrances used in preparation of foods, cosmetics and perfumes. There are no fungal residues left in soil and the fungus never comes in contact with the postharvest produce. An analytical method for residues is not required for an exemption from tolerance because it is expected that, when used as proposed, *Muscodor albus* strain QST 20799 would not result in residues that are of toxicological concern. Volatile compounds produced by the active ingredient occur naturally, and dissipate rapidly in soil and water.

C. Mammalian Toxicological Profile

Studies to evaluate the safety to mammals were conducted on the technical grade active ingredient (TGAI) are summarized as follows:

1. *Acute oral toxicity (OPPTS Harmonized Guideline 870.1100)*. In a non-GLP acute oral toxicity study on rats (three male/three female) using the limit dose, no effects were seen in test animals and an LD_{50} >5,000 milligrams/kilogram (mg/kg) is proposed. All six rats gained weight during the course of the study. There were no mortalities during the study. At necropsy all tissues appeared grossly normal in all six rats. Clearance was not measured in this study.

2. *Acute oral toxicity/pathogenicity (OPPTS Harmonized Guideline 885.3050)*. In an acute oral toxicity/pathogenicity study a dose of 0.1 gram dry weight of mycelium (equivalent to 1×10^8 cfu/g) was administered to rats (15 male/15 female) via oral gavage. There were no adverse effects, mortalities, clinical signs or abnormal macroscopic findings at post-mortem. No viable *Muscodor albus* strain QST 20799 were recovered from the organs, blood, intestinal contents or feces from any of the treated animals during the study, and the test material was rated as non-toxic and non-pathogenic.

3. *Acute dermal toxicity/pathogenicity (OPPTS Harmonized Guideline 885.3100)*. In an acute dermal toxicity/pathogenicity study on rabbits (five male/five female) using a dose of 2.0 mL/kg body weight applied topically, there were no dermal reactions, mortalities, significant clinical signs or abnormal macroscopic findings at post-mortem. An LD_{50} >2,000 mg/kg was established.

4. *Acute pulmonary toxicity/pathogenicity (OPPTS Harmonized Guideline 885.3150)*. In an acute pulmonary toxicity/pathogenicity study on rats (23 male/23 female) using a dose of 0.3 grams/100 grams (or 3.0 grams/kg) body weight (highest possible dose) administered by a single intratracheal instillation, there were three unscheduled deaths. Deaths were attributed to the dosing procedure and viscous nature of the test material. No toxicity or clinical signs related to treatment with the active ingredient were observed. No viable *Muscodor albus* strain QST 20799 were recovered from the organs, blood, intestinal contents or feces from any of the treated

animals during the study, and the test material was rated as non-toxic and non-pathogenic.

5. *Primary eye irritation (OPPTS Harmonized Guideline 870.2400).* In a primary eye irritation study on rabbits (three female) using a dose of 0.1 mL per eye administered topically, there was minimal irritation at 1 hour post dosing, but all effects cleared by 24–hours. No corneal opacity or iridal effects were observed. *Muscodor albus* strain QST 20799 was rated "minimally irritating'' to eyes.

6. *Hypersensitivity incidents (OPPTS Harmonized Guideline 885.3400).* The registrant has noted that no incidents of hypersensitivity or any other adverse effects have occurred through the research, development or testing of the active ingredient and its related end-use product. Should any hypersensitivity incidents occur, they will be reported per FIFRA section 6(a)(2). The above studies show the active ingredient is not toxic, pathogenic, infective or irritating to mammals. In addition, growth temperature analysis has shown that *Muscodor albus* strain QST 20799 does not grow below 5 °C or above 34 °C, which would indicate that the active ingredient would be unlikely to infect humans or other mammals with normal body temperatures above 37 °C.

7. *Data waiver requests.* For the technical grade active ingredient (TGAI) and the end-use products, Arabesque, Andante and Glissade, a waiver has been requested for the acute intravenous injection toxicity/pathogenicity, acute oral toxicity (limit dose), acute dermal toxicity (limit dose), acute inhalation toxicity (limit dose), dermal irritation, dermal sensitization and the conditionally required Tier 1 data for cell culture and immune response. Rationale for waiver of these data requirements is based on the lack of exposure, demonstrated safety to mammals, in the toxicity/pathogenicity and irritation tests, and the known growth temperature range of the organism. A temperature growth study was conducted at temperatures from 5 °C to 34 °C. Growth was observed from 10 °C to 30 °C; no growth occurred at 5 °C or at 34 °C. Therefore, it can be concluded that the organism will grow above 5 °C and below 34 °C. Since this is lower than the body temperature of the mammalian test animals, it is unlikely that the organism would survive in these studies.

Muscodor albus strain QST 20799 produces volatile organic compounds that inhibit or kill several plant pathogens. The volatile compounds produced by the active ingredient have been evaluated in a risk assessment conducted by the registrant. None of these compounds are endotoxins and they are not toxic to humans.

The results of toxicity testing indicates there is no risk to human health or the environment from *Muscodor albus* strain QST 20799. The major intended use of *Muscodor albus* strain QST 20799 is to fumigate soil and harvested crops for the purposes of disease control. This product will be a viable alternative to the use of soil fumigants and postharvest fungicides that have been demonstrated to be harmful to the environment and human health (e.g., methyl bromide and 1,3 dichloropropane). There are no reports of ecological or human health hazards caused by *Muscodor albus* strain QST 20799. It does not produce recognized toxins, enzymes, or virulence factors normally associated with mammalian invasiveness or toxicity. The absence of acute toxicity or pathogenicity in laboratory animals demonstrates the benign nature of this strain. *Muscodor albus* strain QST 20799 has limited survivability once its carrier nutrient source is exhausted. Volatile compounds produced are not of toxicological concern and dissipate rapidly in the environment. The limited survival of *Muscodor albus* strain QST 20799, the rapid dissipation of the volatile compounds produced, and lack of acute toxicity indicate that both the hazard and the exposure associated with the use of *Muscodor albus* strain QST 20799 are low.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure from use of *Muscodor albus* strain QST 20799, as proposed, is minimal. The major intended use of *Muscodor albus* strain QST 20799 is to fumigate soil and harvested crops for the purposes of disease control. *Muscodor albus* strain QST 20799 has limited survivability once its carrier nutrient source is exhausted. For soil treatment the poor survivability of the active ingredient will limit any dietary exposure. For post-harvest treatment there is no contact between the fungus and the postharvest commodity. The fungus will be in a container or sachet which will allow volatiles to contact the food commodity. The fungus itself will not be in contact with the food commodity. Preliminary studies showed that no residue levels of concern of either the fungus or the volatiles were found on apples exposed to the active ingredient. As discussed above, the active ingredient will not be in direct contact with treated food/feed commodities, and naturally occurring levels of the volatiles in foods are higher than those observed after treatment with Arabesque.

The results of acute oral, dermal and pulmonary toxicity/pathogenicity testing with the TGAI, indicates there is no risk to human health or the environment from *Muscodor albus* strain QST 20799. There are no reports of ecological or human health hazards caused by *Muscodor albus* strain QST 20799. It does not produce recognized toxins, enzymes, or virulence factors normally associated with mammalian invasiveness or toxicity. The absence of acute toxicity or pathogenicity in laboratory animals demonstrates the benign nature of this strain. The limited survival of *Muscodor albus* strain QST 20799, the rapid dissipation of the volatile compounds produced, and lack of acute toxicity indicate that both the hazard and the exposure associated with the use of *Muscodor albus* strain QST 20799 are low.

During commercial and regular use of treated food materials, standard practices of washing, peeling, cooking or processing fruits and vegetable would further reduce any possible residue of the active ingredient. Volatile compounds produced by *Muscodor albus* strain QST 20799 are not of toxicological concern, and dissipate rapidly in the environment.

ii. *Drinking water.* Similarly, exposure to humans from residues of *Muscodor albus* strain QST 20799 inconsumed drinking water would be unlikely. *Muscodor albus* strain QST 20799 is not known to grow or thrive in aquatic environments. Potential exposure to surface water would be negligible and exposure to drinking water (well water or ground water) would be impossible to distinguish from the naturally occurring exposure. The major intended use of *Muscodor albus* strain QST 20799 is to fumigate soil and harvested crops for the purposes of disease control. *Muscodor albus* strain QST 20799 has limited survivability once its carrier nutrient source is exhausted. The risk of the microorganism passing through the soil to ground water is minimal to unlikely. Additionally the fungus would not tolerate the treatment conditions water is subjected to in a municipal drinking water facility (including: chlorination, pH adjustments, high temperatures and/or anaerobic conditions). Volatile compounds produced by *Muscodor albus* strain QST 20799 are not of toxicological concern and dissipate rapidly in the environment.

The results of toxicity testing indicates there is no risk to human health or the environment from *Muscodor albus* strain QST 20799.

There are no reports of ecological or human health hazards caused by *Muscodor albus* strain QST 20799. It does not produce recognized toxins, enzymes, or virulence factors normally associated with mammalian invasiveness or toxicity. The absence of acute toxicity or pathogenicity in laboratory animals demonstrates the benign nature of this strain. The limited survival of Muscodor albus QST 20799, the rapid dissipation of the volatile compounds produced, and lack of acute toxicity indicate that both the potential hazard and the dietary exposure to human adults, infants and children associated with the use of *Muscodor albus* strain QST 20799 are low.

2. *Non-dietary exposure*. The potential for non-dietary inhalation and dermal exposure to the general population, including infants and children, is unlikely as the pesticide is proposed for agricultural or postharvest use sites. The major intended use of *Muscodor albus* strain QST 20799 is to fumigate soil and harvested crops for the purposes of disease control. *Muscodor albus* strain QST 20799 has limited survivability once its carrier nutrient source is exhausted. Volatile compounds produced by *Muscodor albus* strain QST 20799 are not of toxicological concern and dissipate rapidly in the environment. Personal protective equipment (PPE) mitigates the potential for exposure to applicators and handlers of the proposed products, when used in agricultural settings.

The results of toxicity testing indicate there is no risk to human health or the environment from *Muscodor albus* strain QST 20799. There are no reports of ecological or human health hazards caused by *Muscodor albus* strain QST 20799. It does not produce recognized toxins, enzymes, or virulence factors normally associated with mammalian invasiveness or toxicity. The absence of acute toxicity or pathogenicity in laboratory animals demonstrates the benign nature of this strain. The limited survival of *Muscodor albus* strain QST 20799, the rapid dissipation of the volatile compounds produced, and lack of acute toxicity indicate that both the hazard and the exposure associated with the use of *Muscodor albus* strain QST 20799 are low. Non-dietary exposures would not be expected to pose any quantifiable risk because there are no detectable residues of toxicological concern.

E. Cumulative Exposure

It is expected that, when used as proposed, *Muscodor albus* strain QST 20799 would not result in residues that are of toxicological concern. The major intended use of *Muscodor albus* strain QST 20799 is to fumigate soil and harvested crops for the purposes of disease control. *Muscodor albus* strain QST 20799 has limited survivability once its carrier nutrient source is exhausted. Volatile compounds produced by *Muscodor albus* strain QST 20799 are not of toxicological concern and dissipate rapidly in the environment. The results of toxicity testing indicates there is no risk to human health or the environment from *Muscodor albus* strain QST 20799. There are no reports of ecological or human health hazards caused by *Muscodor albus* strain QST 20799. It does not produce recognized toxins, enzymes, or virulence factors normally associated with mammalian invasiveness or toxicity. The absence of acute toxicity or pathogenicity in laboratory animals demonstrates the benign nature of this strain. The limited survival of *Muscodor albus* strain QST 20799, the rapid dissipation of the volatile compounds produced, and lack of acute toxicity indicate that both the hazard and the exposure associated with the use of *Muscodor albus* Strain QST 20799 are low.

F. Safety Determination

1. *U.S. population*. Acute toxicity studies have shown that *Muscodor albus* strain QST 20799 is not toxic, pathogenic, infective or irritating to mammals. The major intended use of *Muscodor albus* strain QST 20799 is to fumigate soil and harvested crops for the purposes of disease control. *Muscodor albus* strain QST 20799 has limited survivability once its carrier nutrient source is exhausted. Volatile compounds produced by *Muscodor albus* strain QST 20799 are not of toxicological concern and dissipate rapidly in the environment. The results of toxicity testing indicates there is no risk to human health or the environment from *Muscodor albus* strain QST 20799. There are no reports of ecological or human health hazards caused by *Muscodor albus* strain QST 20799. It does not produce recognized toxins, enzymes, or virulence factors normally associated with mammalian invasiveness or toxicity. The absence of acute toxicity or pathogenicity in laboratory animals demonstrates the benign nature of this strain. The limited survival of *Muscodor albus* strain QST 20799, the rapid dissipation of the volatile compounds produced, and lack of acute toxicity indicate that both the hazard and the exposure associated with the use of *Muscodor albus* strain QST 20799 are low. There is a reasonable certainty of no harm to the general U.S. population from exposure to this active ingredient.

2. *Infants and children*. As mentioned above, it is expected that, when used as proposed, *Muscodor albus* strain QST 20799 would not result in residues that are of toxicological concern. There is a reasonable certainty of no harm for infants and children from exposure to *Muscodor albus* strain QST 20799 from the proposed uses.

G. Effects on the Immune and Endocrine Systems

To date there is no evidence to suggest that *Muscodor albus* strain QST 20799 functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There is no EPA tolerance for *Muscodor albus* strain QST 20799.

I. International Tolerances

There is no Codex alimentarium commission maximum residue level (MRL) for *Muscodor albus* strain QST 20799.

[FR Doc. 04–7476 Filed 4–6–04; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0073; FRL–7349–9]

Forchlorfenuron; Notice of Filing a Pesticide Petition to Establish an Extension of a Time-Limited 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–2004–0073, must be received on or before May 7, 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–2004–0073. 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–2004–0073. The system is an "anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2004–0073. 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–2004–0073.

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–2004–0073. 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: March 22, 2004.

Betty Shackleford,

Acting 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 the KIM-C1, LLC, c/o Siemer & Associates, Inc., 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.

KIM-C1, LLC, c/o Siemer & Associates, Inc.,

PP 7G4906

EPA has received a pesticide petition (PP 7G4906) from KIM-C1, LLC, c/o Siemer & Associates, Inc., 4672 W. Jennifer, Street, Suite 103, Fresno, CA 93722, proposing, pursuant to section 408(d) the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an extension of a time-limited tolerance for forchlorfenuron (CPPU) in or on the raw agricultural commodities almonds, apples, blueberries, figs, grapes, kiwi fruit, pears, and plums at 0.01 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) or 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.* ^{14}C radiolabel studies were conducted on apples, grapes, and kiwi fruit. Results of these three studies showed that the metabolism of CPPU in apples, grapes, and kiwi fruit is similar, if not identical. Metabolism of CPPU in these crops involved hydroxylation of the phenyl-ring to form 3-hydroxy-CPPU or 4-hydroxy-CPPU followed by conjugation with glucose to form B-glycosides. These studies were conducted using CPPU at 15 parts per million (ppm) and 75 ppm. Most of the residue remained on the treated surface and was primarily associated with the pulp tissue. Very little radioactivity was found in the juice.

2. *Analytical method*. Two analytical methods both based on high performance liquid chromotography (HPLC) procedures have been developed. The first used a visible ultraviolet (UV) detector while the second used a mass spec detector. Since the mass spec detector is capable of both qualitative as well as quantitative measurement it is the preferred method. The level of quantification (LOQ) in whole grape fruit was 0.01 ppm; the level of detection (LOD) was 0.003 ppm. In grape juice, the LOQ was 0.002 ppm and the LOD 0.0007 ppm (0.7 parts per billion (ppb)). In raisins the LOQ was 0.01 ppm and the LOD was 0.003 ppm.

3. *Magnitude of residues*. The magnitude of the residues in the crops are anticipated to be below the level of quantification which, based on whole fruit, will be 0.01 ppm.

B. Toxicological Profile

A full battery of toxicology testing including studies of acute, subchronic, chronic, oncogenicity, developmental, reproductive and genotoxicity effects is available for CPPU. The acute toxicity of CPPU is low by all routes. The lowest subchronic study no observable adverse effect level (NOAEL) value is 16.8 milligrams/kilogram/day (mg/kg/day) obtained from the dog 90–day toxicity study. Chronic studies indicate that CPPU is not carcinogenic. The lowest chronic dietary NOAEL is 7 mg/kg/day from male rats fed CPPU for 104 weeks. CPPU showed no evidence of developmental toxicity in rats and rabbits. In a rat reproduction study, reproductive effects were only observed at maternally toxic doses. Finally, genetic toxicity studies indicate that CPPU is not genotoxic. For the purpose of dietary risk analysis, 0.07 mg/kg/day is proposed for the chronic population adjusted dose (cPAD). The cPAD is based on a chronic endpoint of 7 mg/kg/day which is the NOAEL for males from the rat chronic/oncogenicity feeding study and an uncertainty factor of 100. No acute toxicity endpoint could be identified and, therefore, an acute dietary risk assessment is considered unnecessary.

1. *Acute toxicity*. The acute toxicity of CPPU is low by all routes. The battery of acute toxicity studies place CPPU into Toxicity Category III. CPPU has low acute toxicity when administered orally, dermally or via inhalation to rats. It is not a skin irritant and is only a mild eye irritant. CPPU is not a skin sensitizer.

2. *Genotoxicity*. The genotoxic potential of CPPU was studied *in vitro* in bacteria and mammalian cells and *in vivo* in the unscheduled DNA synthesis test. The test systems assayed did not show any evidence of genotoxicity except in the bacterial mutagenicity assay, strain TA1535, without metabolic activation. The weight of the evidence indicates that CPPU does not possess significant genotoxicity concerns.

3. *Reproductive and developmental toxicity*. Developmental effects of CPPU were studied in rats and rabbits and multigenerational effects on reproduction were studied in rats.

i. *Rat developmental*. In the developmental toxicity study conducted with rats, CPPU was administered by gavage at levels of 0, 100, 200, and 400 mg/kg/day. The maternal and developmental NOAELs are 200 mg/kg/day based on reduced body weights, body weight gain and food consumption and an increased incidence of alopecia in dams. There were no developmental effects.

ii. *Rabbit developmental.*. In the rabbit developmental toxicity study, gavage doses of 0, 25, 50, 100 mg/kg/day were administered. Maternal toxicity (decreased body weight and body weight gains) was observed at 50 mg/kg/day and above. The maternal NOAEL is 25 mg/kg/day and the developmental NOAEL is 100 mg/kg/day. There were no developmental effects.

iii. *Reproduction*. In the rat reproduction study, CPPU was administered in the diet at levels of 0, 150, 2,000 and 7,500 ppm for two generations. There were no adverse effects of CPPU on reproductive success. Parental toxicity consisted of clinical signs, inhibition of body weight gain, reduced food consumption, and macroscopic and microscopic effects in the kidney. Reproductive toxicity in the highest dose consisted of slightly reduced live litter sizes in the F_2 litters. In the pups, body weights and survival (late lactation period) were reduced and at the high dose, pup mortality and emaciation were increased. The parental, pup and reproductive NOAELs are 150 ppm, 150 ppm and 2,000 ppm, respectively.

4. *Subchronic toxicity*. Subchronic studies have been conducted with CPPU in the rat, mouse and dog.

i. *Rats*: CPPU technical was tested in rats in a 3–month study at dietary levels of 0, 200, 1,000 and 5,000 ppm. Observations were decreased body weight, body weight gain and food efficiency. The NOAEL males is 5,000 ppm (400 mg/kg/day) and in females is 1,000 ppm (84 mg/kg/day).

ii. *Mice*. A 13–week feeding study in mice was conducted at dose levels of 0, 900, 1,800, 3,500 and 7,000 ppm. Effects included decreased body weight and food consumption, increased relative liver weight and lymphocytic cell infiltration in the kidneys. The NOAEL is 3,500 ppm (609 mg/kg/day in males and 788 mg/kg/day in females).

iii. *Dogs*: A 13–week dietary toxicity study was conducted in beagle dogs at dose levels of 0, 50, 500, and 5,000 ppm. Effects included decreased body weight gain, food consumption and food efficiency. The NOAEL for both sexes was 500 ppm (16.8 mg/kg/day in males and 19.1 mg/kg/day in females).

5. *Chronic toxicity*. CPPU has been tested in chronic studies with dogs, rats, and mice.

i. *Rats*. In a 104–week combined chronic/oncogenicity study in rats, CPPU was administered at dose levels of 0, 150, 2,000, and 7,500 ppm in the diet. Findings were decreased body weight, body histopathological effects in the kidney. No oncogenicity was found. The NOAEL for this study is 150 ppm (7 mg/kg/day in males and 9 mg/kg/day in females).

ii. *Mice*. CPPU was administered in the diet to mice for 78–weeks at dose levels of 0, 10, and 1,000 mg/kg/day. Observations were decreased body weight and body weight gain, food consumption, increased kidney weights and incidence of chronic kidney histopathological lesions. The NOAEL for both sexes is 10 mg/kg/day.

iii. *Dogs*. In a 12–month study, CPPU was administered in the diet to dogs at dose levels of 0, 150, 3,000 and 7,500 ppm. Observations included reduced body weight, body weight gain and food consumption and various hematology changes. The NOAEL for both sexes was 3,000 ppm (87 mg/kg/day in males and 91 mg/kg/day in females).

iv. *Carcinogenicity*. CPPU did not produce carcinogenicity in chronic studies with rats or mice. The oncogenicity classification of CPPU will be ''E'' (no evidence of carcinogenicity for humans).

6. *Animal metabolism*. A rat metabolism study indicates that CPPU is almost completely absorbed and most of the ^{14}C-CPPU-derived radioactivity is rapidly eliminated primarily via the urine. The majority of the metabolism of CPPU was via hydroxylation of the phenyl ring. The sulfate conjugate of hydroxyl CPPU was the major metabolite excreted in the urine, accounting for as much as approximately 96% of the urinary radioactivity. Tissue residues accounted for less than 1% of the administered dose at 168 hours post-dosing.

7. *Metabolite toxicology*. Metabolites occur at levels below 0.1 ppm and, therefore, are below levels required to be assayed in animal testing.

8. *Endocrine disruption*. Potential endocrine effects. No special studies to

investigate the potential for endocrine effects of CPPU have been performed. However, as summarized above, a large and detailed toxicology data base exists for the compound including studies in all required categories. These studies include acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histology and histopathology of numerous tissues, including endocrine organs, following repeated or long-term exposures. These studies are considered capable of revealing endocrine effects. The results of all of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, it is concluded that CPPU does not possess estrogenic or endocrine disrupting properties.

C. Aggregate Exposure

1. *Dietary exposure*. The dietary exposure assessment was conducted by Environs for foods containing forchlorfenuron: CAS Number: 68157–60–8 (CPPU).

i. *Food*. A reference dose (RfD) was calculated using the most sensitive species data available from the toxicological testing. This RfD 0.08 mg/kg/day/based on a temporary tolerance of 0.01 ppm, was used to calculate the impact of the estimated residue levels with results from treatment of the indicated crops. The table below shows the theoretical maximum residue concentrations (TMRC) of CPPU on or in the listed crops requested in the EUP request.

Theoretical maximum residue concentrations for CPPU for the crops listed in the EUP request

	All - Apples	All + Apples	Total Exposure	
			Mg/kg bwt/day	Percent of RfD
General U.S. populations (all seasons)	.000005	.000011	.000016	.02
Non-nursing infants	.000029	.000064	.000093	.12
Children (1 to 6 years of age)	.000010	.000048	.000058	.07
Children (7 to 12 years of age)	.000005	.000017	.000022	.03

The anticipated use rate of 17 grams of CPPU per acre applied once per year yielding residue levels in the very low ppb range indicates that less than 1% of the RfD would be consumed in aggregate with all of these crops. The crop contributing greatest to the percent of the RfD related to the most sensitive of the population, i.e., all nursing infants (less than 1–year old) would represent $1/10^{th}$ of 1% of the RfD. Making the same risk exposure calculations, it is shown that there is no significant impact on reducing the RfD by using almonds, apples, blueberries, figs, grapes, kiwi fruit, pears, and plums in aggregate. Combining the RfD consumption from the large group of crops with that of apples would exceed 1% of the reference dose only slightly if the total acreage of all these crops were treated. The intention of this experimental use permit is not to treat all of the various crops listed; the following table shows the requested acreage of each crop.

Crop	Acreage Requested	% Total Acreage
Grape	3,500	0.53
Kiwi fruit	250	0.05
Almond	50	0.01
Apple	50	0.14
Blueberries	50	--
Figs	50	0.40
Plums	50	0.03
Pears	20	0.15

This program would permit development of requisite data to assure safe and efficacious use and, yet, not subject any segment of the public to a health risk.

Acute (1–day) exposure would not represent any hazard since no acute exposure was identified in this risk assessment.

ii. *Drinking water*. The very low use rate of CPPU, i.e., 17 grams active ingredient (a.i.) or less per acre if used constantly for 20 years would apply less than a pound of CPPU per acre during that 20 year period. Computer modeling, using the conservative pesticide root zone model (PRZM) means of analysis has shown that no CPPU would reach ground water, even in sandy loam soils. The results of this risk analysis supported an unambiguous conclusion of "essentially zero risk to ground water'' even under reasonable worst-case assumptions. Concentrations are not predicted to exceed 15 to 20 ppb of CPPU in the soil in the upper soil horizons, even following yearly applications for as long as 30 years. No secondary exposure is anticipated as a result of contamination of drinking water.

2. *Non-dietary exposure*. No non-dietary exposure is expected since CPPU is not anticipated to be found in the drinking water. This material does not translocate in plants and thus secondary exposure through plants growing in soil receiving CPPU is not anticipated. The extremely low

application rates will not result in significant buildup in the environment. Data indicate that any parent material of CPPU left in the soil will be strongly bound to soil particles and will not move.

D. Cumulative Effects

There are no cumulative effects expected since CPPU is not taken up by plants from the soil. It slowly degrades to mineral end points. Its low use rates and infrequent applications are not conducive to buildup in the environment.

E. Safety Determination

1. *U.S. population.* As pointed out above in dietary exposure-food, the percentage of the RfD consumed by treating the subject crops represents only slightly more than 1% of the estimated safe level for the most sensitive segment of the population, non-nursing infants.

2. *Infants and children.* No developmental, reproductive or fetotoxic effects have been associated with CPPU. The calculation of safety margins with respect to these segments of the population were taken into consideration in the TMRC estimates with respect to the risk associated with the percentage of the reference dose being consumed.

F. International Tolerances

There is no Codex maximum residue level established for CPPU. However, CPPU is registered for use on grapes and other crops in Japan, Chile, Mexico, and South Africa.

[FR Doc. 04–7651 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7644–5]

Interpretation of Regulations Related to Payments to Consultants Under Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA's Appropriation Act limits the Agency's participation in the amounts recipients pay to consultants to the maximum daily rate of pay for Level IV of the Executive Schedule. Recently, questions have been posed regarding how to interpret both the statutory consultant fee limitation and the EPA regulation. The purpose of the attached document is to provide EPA grant specialists and project officers guidance regarding the Agency's interpretation of the appropriation act language as well as the regulatory provisions. This notice explains for EPA applicants and recipients how EPA applies the payment limit.

DATES: The attached document becomes effective on April 7, 2004.

FOR FURTHER INFORMATION CONTACT: William Hedling, 1200 Pennsylvania Ave., Mail Stop 3903 R, Washington, DC 20460, Telephone—202–564–5377, E-Mail—*Hedling.William@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA's appropriation act limits the Agency's participation in the amounts recipients pay consultants to the maximum daily rate of pay for Level IV of the Executive Schedule. This limit was first established in EPA's Fiscal Year 1978 appropriation act and Congress clarified the scope of the limit in EPA's Fiscal Year 1979 appropriation act. The Agency applies the limit to EPA assistance agreements through EPA's Uniform Administrative Requirements and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (40 CFR 30.27(b)) and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (40 CFR 31.36(j)). In addition, EPA's regulations provide that contracts with firms for services which are awarded using the prescribed procurement requirements are not subject to the consultant fee limitations (40 CFR 30.27(b) and 31.36 (j)).

Recently, there have been some questions raised regarding EPA's application of the limit. The purpose of the attached document is to provide EPA grant specialists and project officers guidance regarding the Agency's interpretation of the appropriation act language as well as the regulatory provisions. This notice provides information to EPA applicants and recipients to make them aware of how EPA applies the payment limit. This guidance clarifies existing EPA policy and applies to all EPA assistance agreements, regardless of award dates.

This document reiterates the limits under EPA's appropriation act and makes clear that:

- If a recipient, or its contractor, chooses to pay more than the consultant fee cap ($524.72 per day in 2004), the recipient must use its own funds to pay the difference. Also, if the assistance agreement includes a recipient indirect cost rate, the recipient can apply it only to allowable costs, not to amounts in excess of the consultant fee cap. Finally, recipients cannot use the amount in excess of the consultant fee cap for cost sharing purposes. (The consultant fee cap does not apply to reasonable consultant overhead or travel direct costs. Recipients may reimburse these direct costs in accordance with their normal practices.)
- If a consultant is paid on an hourly basis, EPA will not participate in more than the hourly equivalent of the rate ($65.59 per hour for 2004), nor will EPA participate in more than the maximum daily rate if a consultant paid on an hourly basis works more than 8 hours in a day. Further, if a consultant works less than 8 hours in a day, EPA will not participate in more than the hourly equivalent rate for each hour worked even if the consultant is paid on a daily basis. There may be cases where recipients believed that EPA would participate in the maximum daily rate, even if the consultant worked less than 8 hours in a day. In such cases, recipients and EPA Grants Management Offices should document the situation and may request the Director, Grants Administration Division, to waive the hourly limit under section 9 of the EPA Order.
- The consultant fee cap does not apply to contracts with firms or individuals that are awarded pursuant to the procurement procedures under 40 CFR Parts 30 and 31 (40 CFR 30.27(b) and 40 CFR 31.36(j)(2)) so long as the terms of the contract do not provide the recipient with responsibility for the selection, direction, and control of the individual(s) who will be providing services under the contract. Conversely, the consultant fee cap does apply to contracts with firms or individuals that are awarded under the procurement procedures of 40 CFR Parts 30 and 31 if the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. The cap does not apply to fixed priced or lump sum contracts for specified products such as reports or delivery of a training course. Applicants or recipients who have questions concerning whether an individual is a consultant subject to the fee cap should contact the appropriate EPA project officer or grants specialist.
- The consultant fee cap does not apply to contracts for technical advisory services awarded competitively under EPA's Superfund Technical Assistance Grant (TAG) program regulations at 40 CFR 35.4205 provided that the terms of the contract indicate that the technical advisor has the discretion of an independent contractor and do not vest the TAG recipient with responsibility

for the direction and control of the technical advisor.

The ''Consultant Fees Under EPA Assistance Agreements Policy'' (GPI 04–04), is attached following this announcement.

Authority: Pub. L. 95–119, 40 CFR 30 and 31.

Dated: April 1, 2004.

David J. O'Connor,

Acting Assistant Administrator, Office of Administration and Resources Management.

GPI–04–04

Consultant Fees Under EPA Assistance Agreements

1. *Purpose:* This policy clarifies the Environmental Protection Agency's (EPA) interpretation of the statutory and regulatory provisions regarding EPA's participation in the amounts recipients pay to consultants under EPA assistance agreements. The policy also shows how EPA calculates and applies the daily and hourly rates.

2. *Background:* EPA's appropriation act limits the Agency's participation in the amounts recipients pay to consultants to the maximum daily rate of pay for Level IV of the Executive Schedule. This limit was first established in EPA's 1978 appropriation act and is made applicable to EPA assistance agreements by EPA's Uniform Administrative Requirements and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (40 CFR 30.27(b)) and EPA's Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (40 CFR 31.36(j)). In addition, EPA's regulations provide that contracts with firms for services which are awarded using the prescribed procurement requirements are not subject to the consultant fee limitations (40 CFR 30.27(b) and 31.36 (j)). Recently, questions have been posed regarding how to interpret the EPA regulations implementing the statutory consultant fee limitation. The purpose of this document is to provide EPA staff with information regarding EPA's interpretation of the appropriation act language as well as the regulatory provisions.

3. *Definitions:*

Consultant—For the purposes of this policy, a consultant is an individual with specialized skills who, although not on the recipient's payroll as an employee, provides personal services to the recipient under an agreement which essentially establishes an employer-employee relationship between the recipient and the individual providing the services. Consultants are typically individuals who are experts with excellent qualifications and are usually regarded as authorities or practitioners of unusual competence and skill by other individuals engaged in the same profession. An employer-employee relationship may be found to exist when the recipient selects the individual based on expertise in a particular field, directs the individual's work, and exercises day-to-day control of the individual's activities.

Consultant fee cap—The daily or hourly salary of Federal employees at Level IV of the Executive Schedule. EPA will not participate in any amount greater than that rate; recipients may, however, pay more. The 2004 annual salary for Level IV of the Executive Schedule is $136,900 per year. The current maximum daily rate (the consultant fee cap) of $524.72 is computed as follows: $136,900/2087 hours per year = $65.59 per hour x 8 hours per day = $524.72 per day. If a consultant works less than 8 hours in a day, the hourly consultant fee cap is $65.59 per hour.

4. *Authority:* The consultant fee cap first appeared in Section 409 of the Fiscal Year (FY) 1978 Appropriations Act for the Department of Housing and Urban Development and Independent Agencies, including EPA (Pub. L. 95–119). It limited the amount EPA could participate in to the rate paid to a Federal employee at the GS–18 level. The consultant fee cap in Section 408 of the FY 2002 Departments of Veterans Affairs, and Housing and Urban Development and Independent Agencies Appropriation Act, (Pub. L. 107–272), which covers EPA, is identical to that contained in the FY 1978 appropriations act except that the limit is based on the daily rate for a Federal employee at the ES–IV level.

EPA implemented the consultant fee cap in its regulations at 40 CFR 30.27(b) for grants made to non-profit organizations and universities, and at 40 CFR 31.36.(j)(2) for grants to States, local governments, and Indian Tribes.

5. *Policy:* It is EPA policy, consistent with the relevant appropriation acts and regulations, to limit EPA's participation in the amounts recipients pay to consultants to the consultant fee cap ($524.72 per day and $65.59 per hour in 2004). Recipients may pay more than the consultant fee cap, but EPA will not participate in any amount over the maximum. The consultant fee cap also applies to consultants hired by a recipient's contractors.

If the recipient, or its contractor, chooses to pay more than the consultant fee cap, the recipient must use its own funds to pay the difference. (If the assistance agreement includes a recipient indirect cost rate, the recipient can apply it only to allowable costs, not to amounts in excess of the consultant fee cap). Further, recipients cannot use the amount in excess of the consultant fee cap for cost sharing purposes. The consultant fee cap does not apply to reasonable consultant overhead or travel direct costs. Recipients may reimburse these costs in accordance with their normal practices.

The consultant fee cap does not apply to contracts awarded to firms or individuals that are awarded under the procurement procedures under 40 CFR Parts 30 and 31 (40 CFR § 30.27(b) and 40 CFR § 31.36(j)(2)) so long as the terms of the contract do not provide the recipient with responsibility for the selection, direction, and control of the individual(s) who will be providing services under the contract. Conversely, the consultant fee cap does apply to contracts awarded to firms or individuals that are awarded under the procurement procedures of 40 CFR Parts 30 and 31 if the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. The cap does not apply to fixed priced or lump sum contracts for specified products such as reports or delivery of a training course.

For example, a contract with a multi-person firm that does not require the firm to provide to the recipient the services of a particular individual, and that does not require the recipient to exercise control and direction over the individual, would not be subject to the cap. On the other hand, the consultant fee cap would apply to a contract awarded to a firm with one or more persons that is justified on the basis of the qualifications of a designated individual with specialized skills if the terms of the contract require the firm to provide the recipient with the services of that individual at an hourly or daily rate of compensation and the recipient will exercise direction and control over that individual in the performance of the contract. Questions regarding whether a particular individual under a contract may be performing as a consultant and thus be subject to the consultant fee cap should be directed to the Office of General Counsel or Office of Regional Counsel, as appropriate.

In addition, the consultant fee cap does not apply to contracts for technical advisory services awarded competitively under EPA's Superfund Technical Assistance Grant (TAG) program regulations at 40 CFR 35.4205

provided that the terms of the contract indicate that the technical advisor has the discretion of an independent contractor and do not vest the TAG recipient with responsibility for the direction and control of the technical advisor.

6. *Roles and Responsibilities:* Program Offices. Project officers should alert Grants Management Offices (GMOs) if they find indications that a recipient is using consultants, *e.g.*, statements in workplans or findings as a result of post award monitoring activities. GMOs Grant Specialists must review applications for indications that a recipient may use consultants. If the application or other information, including the budget, indicates the recipient will use funds for contracts or consultants, the Grants Specialist must include the "Consultant Fee'' Term and Condition in the award document. Also, as required by the protocols for both On-Site and Desk Reviews, Grant Specialists must verify that consultant fees do not exceed the consultant fee cap. GMOs should, in cases where it is determined in accordance with Section 5 of this Order, that a recipient may be obtaining consultant services under a contract, refer the cases to the Office of Regional or General Counsel for consideration.

7. *Award Term and Condition:* The current Integrated Grants Management System Consultant Fee Term and Condition is shown below:

Award condition	
Short title	A28 Individual consultants
Type	Administrative

Payment to consultants. EPA participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2004, the limit is $524.72 per day and $65.59 per hour. The rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j)(2) or 30.27(b), as applicable.

EPA updates this term and condition annually based on changes in Level IV of the Executive Schedule maximum pay.

8. *Examples:*

A. If a consultant bills the recipient for 3 days of service at $2,000.00/day, EPA will limit its participation to the consultant fee cap which would be 3 × $524.72 = $1,574.16, provided the consultant works 8 or more hours each day. If the recipient pays the consultant more than $1,574.16, the additional amount is not EPA allowable and cannot be used for cost sharing.

B. If a consultant works 3 hours in a day, EPA will allow only 3 × $65.59 or $196.77. If the recipient pays the consultant more than $196.77, the additional amount is not EPA allowable and cannot be used for cost sharing.

C. If a consultant works more than 8 hours in a given day and, as a result, the recipient must pay the consultant more than the daily consultant fee cap, EPA will limit its participation to $524.72 (NOT, for example, 10 × $65.59 or $655.90). If the recipient pays the consultant more than $524.72, the additional amount is not EPA allowable and cannot be used for cost sharing.

9. *Waivers:* This policy makes clear that, if a consultant works less than 8 hours in a day, the maximum amount allowable would be the number of hours worked times the maximum hourly rate. In the past, recipients may have believed that EPA would participate in the maximum daily rate even if a consultant worked less than 8 hours in a day. In such cases, recipients and Grants Management Offices should document the facts of the situation and may request a waiver of the hourly limit from the Director, Grants Administration Division.

10. *Anticipated Outcomes/Results:* EPA's Regions and Headquarters offices will apply the consultant fee cap consistently.

11. *Sunset/Review Date:* The Grants Administration Division will review this policy annually to determine if adjustments are needed because of changes in the daily and hourly salary of Federal employees at the ES–IV level. Adjustments will be reflected in revisions to the consultant fee assistance agreement term and condition.

12. *Supercedes/Cancels:* This Grants Policy Issuance (GPI) revises and rescinds GPI 03–02 to further clarify EPA's policy with respect to the consultant fee cap.

[FR Doc. 04–7867 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–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.: 011642–008.

Title: East Coast United States/East Coast of South America Vessel Sharing Agreement.

Parties: A.P. Moller-Maersk A/S; N.V.; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Mercosul Line Navegacao e Logistica Ltda.; Alianca Navegacao e Logistica Ltda.; and Hamburg-Sud.

Synopsis: The modification removes Safmarine Container Lines, Compania Sud Americana de Vapores, and Companhia Libra de Navegacao as participants in the agreement. It also revises the remaining parties' space allocations and vessel contributions as a result to the foregoing withdrawals. The parties request expedited review.

Agreement No.: 011874.

Title: K-Line/Zim Space Charter Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. and Zim Israel Navigation Company Ltd.

Synopsis: The proposed agreement is a vessel-sharing agreement between the parties in the trade between ports in Oregon and Washington and the port of Vancouver, Canada, on the one hand, and ports in China, Japan, Korea, Singapore, Sri Lanka, Israel, Croatia,

Slovenia, Italy, and Greece, on the other hand.

Agreement No.: 011875.

Title: Zim/Hapag-Lloyd USEC Slot Charter Agreement.

Parties: Hapag-Lloyd Container Linie GmbH and Zim Israel Navigation Company Ltd.

Synopsis: The proposed agreement is a vessel-sharing agreement between the parties in the trade between ports on the U.S. East Coast, on the one hand, and the ports of Halifax, Canada, and Kingston, Jamaica, on the other hand.

By Order of the Federal Maritime Commission.

Dated: April 2, 2004.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–7905 Filed 4–6–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Acting Federal Reserve Clearance Officer–Michelle Long–Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Joseph Lackey–Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Reports

1. Report title: Annual Report of Bank Holding Companies.

Agency form number: FR Y–6.

OMB Control number: 7100–0124.

Frequency: Annual.

Reporters: top-tier domestic Bank Holding Companies (BHCs).

Annual reporting hours: 21,913 hours.

Estimated average hours per response: 4.25 hours.

Number of respondents: 5,156.

General description of report: This information collection is mandatory: Section 5(c)(1)(A) of the Bank Holding Company Act (12 U.S.C. § 1844(c)(1)(A)); Section 8(a) of the International Banking Act (12 U.S.C. § 3106(a)); Sections 11(a)(1), 25 and 25A of the Federal Reserve Act (12 U.S.C. §§ 248(a)(1), 602, and 611a); Section 211.13(c) of Regulation K (12 CFR 211.13(c)); and Section 225.5(b) of Regulation Y (12 CFR 225.5(b)). Individual respondent data are not considered as confidential. However, a company may request confidential treatment pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. §§ 522(b)(4) and (b)(6)).

Abstract: The FR Y–6 is an annual report filed by top-tier BHCs, and collects financial data, an organization chart, and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company compliance with the provisions of the BHC Act and Regulation Y.

Current actions: On December 5, 2003, the Federal Reserve issued for public comment proposed revisions to the Annual Report of Bank Holding Companies (68 FR 68083). The comment period expired on February 3, 2004. The proposed revisions included requiring that only top-tier BHCs file the FR Y–6 report, eliminating Report Item 1(a) that requires a BHC to submit a copy of its Securities and Exchange Commission form 10–K, adding three minor items to the cover page, and clarifying several areas in the instructions.

The Federal Reserve did not receive any comment letters directly related to the proposed changes; however, one small BHC suggested the Federal Reserve allow a reporting exemption for BHCs with consolidated assets less than $500 million. The Federal Reserve relies heavily on off-site reports for smaller BHCs in order to limit the frequency of on-site inspections. Additionally, certain information collected on the FR Y–6 is not available from other sources for nonpublic companies, which is most of the population of BHCs with less than $500 million in consolidated assets. Accordingly, the Federal Reserve has decided to retain the FR Y–6 reporting requirement for BHCs with consolidated assets less than $500 million.

The Federal Reserve approved revisions to the FR Y–6 as proposed, effective with fiscal years beginning after December 31, 2003.

2. Report titles: Report of Changes in Organizational Structure and Report of Changes in FBO Organizational Structure

Agency form numbers: FR Y–10 and FR Y–10F.

OMB control number: 7100–0297.

Frequency: Event generated.

Reporters: FR Y–10: Top-tier domestic BHCs, including financial holding companies (FHCs), and unaffiliated state member banks; FR Y–10F: foreign banking organizations (FBOs), including FHCs.

Annual reporting hours: FR Y–10: 9,792 hours; FR Y–10F: 1,635 hours.

Estimated average hours per response: FR Y–10: 1 hour; FR Y–10F: 1 hour.

Number of respondents: FR Y–10: 2,448; FR Y–10F: 327.

General description of reports: These information collections are mandatory: Sections 4(k) and 5(c)(1)(A) of the Bank Holding Company Act (12 U.S.C. §§ 1843(k), 1844(c)(1)(A)); Section 8(a) of the International Banking Act (12 U.S.C. § 3106(a)); Sections 11(a)(1), 25(7) and 25A of the Federal Reserve Act (12 U.S.C. §§ 248(a)(1), 602, and 611a); Section 211.13(c) of Regulation K (12 CFR 211.13(c)); and Sections 225.5(b) and 225.87 of Regulation Y (12 CFR 225.5(b) and 225.87). Individual respondent data are not considered as confidential. However, a company may request confidential treatment pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. §§ 522(b)(4) and (b)(6)).

Abstract: The FR Y–10 is filed by top-tier domestic BHCs, including FHCs, and state member banks unaffiliated with a BHC or FHC, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in both banking and nonbanking activities.

The FR Y–10F is filed by FBOs, including FHCs, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to ensure compliance with U.S. banking laws and regulations and to determine the risk profile of the FBO structure.

Current actions: On December 5, 2003, the Federal Reserve issued for public comment proposed revisions to the Report of Changes in Organizational Structure and Report of Changes in FBO Organizational Structure (68 FR 68083). The comment period expired on February 3, 2004. The proposed revisions to the reporting forms consist primarily of reorganizing line items into separate schedules for banking and nonbanking investments. In addition, the Federal Reserve proposed to replace the Federal Reserve System activity codes with the North American Industrial Classification System codes and to reorganize and clarify the instructions. The Federal Reserve received comment letters from two large BHCs. The comments received are addressed below.

One commenter advocated an exemption from FR Y–10 filing requirements for direct and indirect investments in all companies formed to hold certain affordable housing projects. The Federal Reserve considers the magnitude of some such investments a matter of supervisory interest and will continue to collect and review information about this type of investment. The Federal Reserve is investigating whether an exemption from FR Y–10 reporting for some limited subset of these investments might be practical or warranted. Any change to FR Y–10 reporting requirements would be subject to the report approval process (including a formal notice and comment period).

Another commenter recommended several clarifications to the FR Y–10 report instructions, including the addition of definitions for certain terms. In response, definitions of ''voting securities'', ''nonvoting shares'', and ''class of voting shares'' have been added to the Glossary appended to the instructions for the FR Y–10 and FR Y–10F, and other minor clarifications have been made to the instructions. This commenter also sought inclusion in the instructions of a definition of equity, and recommended modifying the control standard found in the instructions. Given the diversity of equity capital instruments issued by companies, however, it is very difficult to formulate a precise definition of equity applicable to all companies. Hence the reference to reporters that control 25 percent or more of the total equity of the Nonbanking Company has been removed from the control standard. For purposes of the FR Y–10 and the FR Y–10F, control is the reportability threshold for investments in Nonbanking Companies. In addition, this commenter objected to reporting requirements for the 4k schedule in connection with certain types of 4k investments. The Federal Reserve believes that this exception advocated by the commenter would increase complexity by creating different reporting requirements depending upon the type of 4k investment made.

The Federal Reserve approved revisions to the FR Y–10 and FR Y–10F forms and instructions, with implementation as of May 31, 2004.

Board of Governors of the Federal Reserve System, April 1, 2004.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. E4–769 Filed 4–6–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 7, 2004.

ADDRESSES: Comments should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*; by e–mail to *regs.comments@federalreserve.gov*; or by fax to the Office of the Secretary at 202/452–3819 or 202/452–3102. Rules proposed by the Board and other federal agencies may also be viewed and commented on at *www.regulations.gov.* All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Acting Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision of the following report:

1. Report title: Declaration to Become a Financial Holding Company (FHC), Requests for Determinations and Interpretations Regarding Activities Financial in Nature, Notices of Failure to Meet Capital or Management Requirements, Notices by State Member Banks (SMBs) to Invest in Financial Subsidiaries, Regulatory Relief Requests Associated with Merchant Banking Activities, and Recordkeeping Requirements Associated with Merchant Banking Activities.

Agency form number: FR 4010, FR 4011, FR 4012, FR 4017, FR 4019.

OMB control number: 7100–0292.

Frequency: On occasion.

Reporters: Bank holding companies (BHCs), including FHCs, foreign banking organizations (FBOs), and SMBs.

Annual reporting hours: 3,142 hours.

Estimated average hours per response: FR 4010: BHC 3 hours, FBOs 3.5 hours; FR 4011: Activities financial in nature, or incidental or complementary to financial activities 10 hours, Advisory opinions 10 hours; FR 4012: BHCs decertified as FHCs 1 hour, FHCs back into compliance 10 hours; FR 4017: SMBs 4 hours; FR 4019: Regulatory relief requests 1 hour, Portfolio company notification 1 hour; Recordkeeping: 50 hours.

Number of respondents: FR 4010: BHC 58, FBOs 5; FR 4011: Activities financial in nature, or incidental or complementary to financial activities 2, Advisory opinions 2; FR 4012: BHCs decertified as FHCs 13, FHCs back into compliance 27; FR 4017: SMBs 5; FR 4019: Regulatory relief requests 5, Portfolio company notification 5; Recordkeeping: 52.

General description of report: These collections of information are required to obtain a benefit and are authorized under:

FR 4010: Section 4(l)(1)(C) of the BHC Act (12 U.S.C. 1843(1)(l)(C)), section 8(a) of the International Banking Act (12 U.S.C. 3106(a)), and sections 225.82 and 225.91 of Regulation Y (12 CFR. 225.82 and 225.91);

FR 4011: Section 4(k) of the BHC Act (12 U.S.C. 1843(k)) and sections 225.88(b) and (e) and 225.89 of Regulation Y (12 CFR 225.88(b) and (e) and 225.89);

FR 4012: Section 4(m) of the BHC Act (12 U.S.C. 1843(m)), section 8(a) of the International Banking Act (12 U.S.C. 3106(a)), and sections 225.83 and 225.93 of Regulation Y (12 CFR 225.83 and 225.93);

FR 4017: Section 9 of the Federal Reserve Act (12 U.S.C. 335) and section 208.76 of Regulation H (12 CFR 208.76);

FR 4019: Section 4(k)(7) of the BHC Act (12 U.S.C. 1843(k)(7)) and sections 225.171(e)(3), 225.172(b)(4), and 225.173(c)(2) of Regulation Y (12 CFR 225.171(e)(3), 225.172(b)(4), and 225.173(c)(2));

Recordkeeping: Section 4(k)(7) of the BHC Act (12 U.S.C. § 1843(k)(7)) and sections 225.171(e)(4) and 225.175 of Regulation Y (12 CFR 225.171(e)(4) and 225.171).

A company may request confidentiality for the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (b)(6)).

Abstract: Each BHC or FBO seeking FHC status must file the FR 4010 declaration, which includes information needed to verify eligibility for FHC status. By filing the FR 4011 a requestor may ask the Board to determine that an activity is financial in nature, to issue an advisory opinion that an activity is within the scope of an activity previously determined to be financial in nature, or to approve engagement in an activity complementary to a financial activity. Any FHC ceasing to meet capital or managerial prerequisites for FHC status must notify the Board, by filing the FR 4012 notice, of the deficiency, and often must submit plans to the Board to cure the deficiency. Any SMB seeking to establish a financial subsidiary must seek the Board's prior approval by submitting the FR 4017 requirements. Any FHC seeking to extend the 10–year holding period for a merchant banking investment must submit the FR 4019 requirements to apply for the Board's prior approval, and a FHC also must notify the Board if it routinely manages or operates a portfolio company for more than nine months. All FHCs engaging in merchant banking activities must keep records of those activities, and make them available to examiners. There are no formal reporting forms for these event–generated filings.

Proposal to approve under OMB delegated authority the extension for three years, with revision of the following report:

1. Report title: Consolidated Report of Condition and Income for Edge and Agreement Corporations.

Agency form number: FR 2886b.

OMB control number: 7100–0086.

Frequency: Quarterly.

Reporters: Edge and agreement corporations.

Annual reporting hours: 3,173 hours.

Estimated average hours per response: 14.7 banking corporations, 8.5 investment corporations.

Number of respondents: 21 banking corporations, 57 investment corporations.

General description of report: This information collection is mandatory (12 U.S.C. 602 and 625). For Edge corporations engaged in banking, information collected on schedules E and L are held confidential pursuant to Section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)). For investment Edge corporations only information collected on Schedule E is given confidential treatment pursuant to Section (b)(4) of the Freedom of Information Act (5 U.S.C.552(b)(4)).

Abstract: This report collects a balance sheet, income statement, and ten supporting schedules, and it parallels the commercial bank Reports of Condition and Income (Call Report) (FFIEC 031; OMB No. 7100–0036). The Federal Reserve uses the data collected on the FR 2886b to supervise Edge corporations, identify present and potential problems, and monitor and develop a better understanding of activities within the industry.

Current action: The Federal Reserve proposes to align FR 2886b schedule titles, identifiers, and ordering of line items with the Call Report. In addition, the Federal Reserve may modify the FR 2886b report consistent with any applicable revisions to the Call Report, ultimately adopted by the FFIEC for implementation in March 2005.

Board of Governors of the Federal Reserve System, April 1, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E4–770 Filed 4–6–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–34–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Select Agent Distribution Activity: Request for Select Agent (OMB No. 0920–0591)—Reinstatement without change—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

The National Center for Infectious Diseases (NCID) is requesting a three-year clearance to continue data collection under the Select Agent Distribution Activity. The purpose of this project is to provide a systematic and consistent mechanism to review requests that come to CDC for Select Agents. In light of current Bioterrorism concerns and the significant NIH grant monies being directed toward Select Agent research, NCID anticipates the receipt of hundreds of requests for Select Agents.

Applicants will be expected to complete an application form in which they will identify themselves and their institution, provide a CV or biographical sketch, a summary of their research proposal, and signed indemnification and material transfer agreement statements. A user fee will be collected to recover costs for materials, handling and shipping (except for public health laboratories). The estimated annualized burden for this project is 450 hours.

Respondents	Number of respondents	Number of responses per respondent (in hours)	Average burden per response (in hours)
Researcher	900	1	30/60

Dated: March 31, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7885 Filed 4–6–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 8, 2004, 6:30 p.m. to June 10, 2004, 2 p.m. Hamilton Crowne Plaza Hotel, 14th & K Streets NW., Washington, DC 20005 which was published in the **Federal Register** on March 15, 2004, 69 FR 12166.

This meeting is amended to change the starting time on 06/08/04 to 8 a.m. The meeting is closed to the public.

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7832 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel (RFA) ''Approaches to Enhance Vision Health Communication.''

Date: April 21, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institutes, Bethesda, MD 20892. 301–451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7838 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel ''Clinical Vision Research Applications''.

Date: April 13, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–451–2020.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7839 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Prostacyclin Enhances Embryo Implantation.

Date: April 30, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant application.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7829 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Studies of Language, Culture and Tools.

Date: April 26, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7830 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix [2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Pluripotent Stem Cells in Development and in Disease.

Date: April 29, ,2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7831 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Brain, Behavior and Emergence of Cognitive Competence.

Date: April 27, 2004.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 31, 2004

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7833 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: May 3–5, 2004.

Open: May 3, 2004, 6 p.m. to 6:30 p.m.

Agenda: Introductions and Overview.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: May 3, 2004, 6:30 p.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: May 4, 2004, 8 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: May 5, 2004, 8 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Contact Person: Marvin C. Gershengorn, MD, Scientific Director, Division of Intramural Research, National Institute of Diabetes, and Digestive and Kidney Diseases, National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Rm. 9N222, Bethesda, MD 20892, (301) 496–4129.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7835 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Fostering Translational Research in Autoimmune Diseases.

Date: April 22, 2004.

Time: 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Room 749, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@exrra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7836 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of development awards.

Date: April 22, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Glen H. Nuckolls, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Arthritis, Musculoskeletal, and Skin Diseases, 6701 Democracy Boulevard, Bldg. 1, Ste 800, Bethesda, MD 20892, 301–594–4974, *nuckollg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7837 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Loan Repayment Program.

Date: April 27, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Adriana Costero, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–2761, (301) 451–4573, *acostero@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7840 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Production and Testing of a Modified Vaccinia Ankara (MVA) Vaccine.

Date: April 23, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Clayton C. Huntley, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2570, *ch405t@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Cooperative Centers for Translation Research on Human Immunology and Biodefense.

Date: April 29–30, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul A. Amstad, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7841 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Sexually Transmitted Infections Clinical Trials Group (STICTG).

Date: April 26–27, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marc L. Lesnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, DHHS/National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *ml436d@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7842 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 14, 2004, 1 p.m. to April 14, 2004, 2 p.m. National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on March 26, 2004, 69 FR 15891.

The meeting will be held April 16, 2004, from 2 p.m. to 3 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: March 31, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7834 Filed 4–6–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Request for Applications for Minority Fellowship Program (MFP) Grants

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of request for applications for Minority Fellowship Program (MFP) grants.

Authority: Sections 509, 516 and 520A of the Public Health Service Act.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), Center for Substance Abuse Treatment (CSAT), and Center for Substance Abuse Prevention (CSAP), are accepting applications for Fiscal Year 2004 grants to facilitate entry of ethnic minority students into mental health and substance abuse disorders careers and increases the number of psychology, psychiatry, nursing, and social work professionals trained to teach, administer, conduct services research, and provide direct mental health/substance abuse services to ethnic/racial/social/cultural minority groups. For purposes of this Request for Applications (RFA), ethnic/racial/social/cultural minority groups include the following: American Indians, Native Alaskans, Asian Americans, Native Hawaiians, Native Pacific Islanders, African Americans and Hispanics/Latinos, who are hereafter referred to as ethnic minorities or minorities.

DATES: Applications are due on June 7, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on program issues contact: Paul Wohlford, Ph.D., SAMHSA/CMHS, Division of State & Community Systems Development, 5600 Fishers Lane, Room 15C–26, Rockville, MD 20857; Phone: (301) 443–3503; E-mail: *pwohlfor@samhsa.gov*; or Herbert Joseph, Ph.D., M.P.H., SAMHSA/CMHS, Division of State & Community Systems Development, 5600 Fishers Lane, Room 15C–26, Rockville, MD 20857; Phone: 301–443–4257; E-mail: *hjoseph@samhsa.gov.*

For questions on grants management issues contact: Gwendolyn Simpson, SAMHSA/Division of Grants Management, 5600 Fishers Lane, Room 13–103, Rockville, MD 20857; Phone: (301) 443–4456; E-mail: *gsimpson@samhsa.gov.*

SUPPLEMENTARY INFORMATION:

Minority Fellowship Program—(SM 04–001) (Initial)

Catalogue of Federal Domestic Assistance (CFDA) No.: No. 93.244.

KEY DATES

Application deadline	Applications are due by June 7, 2004.
Intergovernmental Review (E.O. 12372)	Letters from State Single Point of Contact (SPOC) are due no later than August 6, 2004.
Public Health System Impact Statement (PHSIS)/SSA Coordination.	Applicants must send the PHSIS to appropriate State and local health agencies by application deadline. Comments from Single State Agency are due no later than August 6, 2004.

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I. Funding Opportunity Description

1. Introduction

As authorized under Sections 509, 516 and 520A of the Public Health Service Act, SAMHSA announces the availability of funds for the Minority Fellowship Program (MFP) grants. The MFP facilitates entry of ethnic minority students into mental health and substance abuse disorders careers and increases the number of psychology, psychiatry, nursing, and social work

professionals trained to teach, administer, conduct services research, and provide direct mental health/substance abuse services to ethnic/racial/social/cultural minority groups. For purposes of this Request for Applications (RFA), ethnic/racial/social/cultural minority groups include the following: American Indians, Native Alaskans, Asian Americans, Native Hawaiians, Native Pacific Islanders, African Americans and Hispanics/Latinos, who are hereafter referred to as ethnic minorities or minorities.

2. Expectations

The overall program goal of the MFP is to facilitate entry of ethnic minority students into mental health and substance abuse disorders careers and to increase the number of psychology, psychiatry, nursing, and social work professionals trained to teach, administer, conduct services research, and provide direct mental health/substance abuse services to ethnic minority groups. The MFP has two target populations:

- The ultimate target populations are ethnic minority persons with mental and/or substance abuse disorders who are presently underserved.
- The intermediary target populations are trainees receiving MFP support who will, later in their careers, directly and/or indirectly serve the ultimate target populations.

2.1 Background

The mental health and substance abuse needs of minority communities within the United States have been historically underserved by trained practitioners sensitive to the cultural issues or equipped with the language skills that impact effective services delivery. In 1974, the National Institute of Mental Health (NIMH) established the MFP to enhance services to minority mental health professionals in psychiatry, nursing, social work, and psychology. In 1992, SAMHSA was established, and the MFP was transferred from NIMH to CMHS in SAMHSA.

While ethnic minority groups continue to increase in absolute numbers and as a proportion of the general population (more than 25 percent), the number of professionally trained minority mental health providers and service researchers (currently around 8 percent) is not increasing in a similar manner. Moreover, relatively few minority students pursue higher professional degrees. The lack of trained ethnic minority professionals is considered to be a significant factor in the lack of access and utilization of minority communities to appropriate health care, including mental health and substance abuse treatment and prevention services.

2.2 Program Plan

Goals. To reduce disparities in mental health/substance abuse services, the goals of the MFP are to:

(1) Create a nucleus of doctoral-level ethnic minority behavioral health professionals who will provide leadership, consultation, training, evaluation of programs, and services administration expertise to State and community agencies, primary care provider organizations, and educational institutions to ensure delivery of the highest quality treatment and prevention services to minorities with mental health and substance abuse disorders. Specifically, programs should work toward the goal of having all MFP Fellows trained in the latest Evidence-based Practices (EBP) in mental health and substance abuse treatment and prevention.

(2) Collaborate with national mental health and substance abuse organizations to provide training support and to enhance interdisciplinary efforts that will increase quality of care and access to mental health and substance abuse treatment and prevention services in underserved minority communities; specifically, programs should work toward the goal of having all MFP Fellows well-trained in both mental health and substance abuse treatment and prevention.

(3) Ensure that training is consistent with the latest EBP developments in culturally competent, behavioral health delivery, and financing mechanisms. SAMHSA defines cultural competency as a set of behaviors, skills, attitudes, and policies that promote awareness, acceptance, and respect for differences; continued knowledge development about other cultures; and adaptable models of service delivery to meet the needs of diverse ethnic minority populations.

(4) Expand training for the evaluation of treatment and prevention programs from the standpoint of ethnic minority consumers who have mental health and/or substance abuse issues.

(5) Enlarge the scope of the program, address the issue of the small number of minority students who pursue higher professional degrees, and increase the pool of available qualified applicants for MFP Fellowships.

2.3 Allowable Activities

SAMHSA's Minority Fellowship Program grants will support the following types of activities:

(1) Develop and administer an MFP program that supports doctoral-level training in mental health and substance abuse prevention and treatment services to minorities, with an emphasis on providing evidence-based treatment and prevention in managed behavioral health care settings.

(2) Establish an advisory committee for the discipline-specific MFP, including minority consumers, to provide consultation and guidance to the MFP, serve as planner and overseer, review both new and renewal student support applications, and select MFP fellows for each funded grant year.

(3) Work with accredited, professional graduate schools to recruit ethnic minority students who are committed to serving minorities with mental health and substance abuse disorders, with particular attention given to bilingual/bicultural individuals.

(4) Collaborate with other professional organizations and educational institutions to increase the pool of available qualified MFP applicants and to facilitate information dissemination concerning the MFP and its program goals and outcomes.

(5) Encourage doctoral students in schools of behavioral health to specialize in areas where personnel shortages frequently occur within minority communities (*e.g.*, child/adolescent and geriatric mental health and substance abuse services; impact of poverty on the mental health needs of minority communities; mental health services to minority communities in inner cities or rural areas; services or treatment for minority persons with serious mental illness or co-occurring substance abuse and mental health disorders).

(6) Provide training opportunities to MFP Fellows in settings that involve ethnic minority consumers and families in the planning and implementation of treatment and prevention service programs and involve training in evaluation to improve services.

2.4 Data and Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or "GPRA'') requires all Federal agencies to:

- Develop strategic plans that specify what they will accomplish over a 3- to 5-year period;
- Set annual performance targets related to their strategic plan; and

• Report annually on the degree to which the previous year's targets were met.

The law further requires agencies to link their performance to their budgets. Agencies are expected to evaluate their programs regularly and to use the results of these evaluations to explain their successes and failures.

To meet these requirements, SAMHSA must collect performance data (*i.e.*, "GPRA'' data) from grantees. You are required to report these GPRA data to SAMHSA on a timely basis so that performance results are available to support budgetary decisions. In your application, you must demonstrate your ability to collect and report on these measures, and you must provide some baseline data.

Appendix B provides the performance indicators for SAMHSA's MFP grantees. You can obtain more detailed information about how to collect and report on these measures by contacting the Government Project Officer listed below.

Before making a grant award, a final agreement regarding data collection will be reached. The terms and conditions of the grant award will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

2.4 Grantee Meetings

You must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects, and Federal staff will provide technical assistance. Each meeting will be 2 to 3 days. These meetings usually will be held in the Washington, DC, area, and attendance is mandatory.

2.5 Evaluation

Grantees must evaluate their projects, and applicants are required to describe their evaluation plans in their applications. The evaluation should be designed to provide regular feedback to the project in order to improve services. Therefore, the evaluation must include the required performance measures described above. The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time, compared with baseline information. Control or comparison groups are not required. You must consider your evaluation plan when preparing the project budget. No more than 10 percent of the total grant award may be used for evaluation and data collection.

Process components should address issues such as:

• How closely did implementation match the plan?

• What types of deviations from the plan occurred?

• What led to the deviations?

• What impact did the deviations have on the intervention and evaluation?

• Who provided (program, staff) what training (modality, type, intensity, duration), to whom (individual characteristics), in what context (system, community), and at what cost (facilities, personnel, dollars)?

Outcome components should address issues such as:

• What were the effects of the training program on the professional career development of individual MFP Fellows? (*e.g.*, direct service, supervision, administration, teaching, research, etc.)

• What program/contextual factors were associated with outcomes?

• What individual factors were associated with outcomes?

• How durable were the effects?

II. Award Information

1. Award Amount

It is expected that $3.3 million will be available for up to four Minority Fellowship Program awards in FY 2004. Annual awards are expected to be up to $950,000 per year in total costs (direct and indirect). Applicants may request a project period of up to three years.

Proposed budgets cannot exceed $950,000 in any year of the proposed budget. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

2. Funding Mechanism

Awards will be made as grants.

III. Eligibility Information

1. Eligibile Applicants

Eligibility is limited to the American Nurses Association (ANA), the American Psychiatric Association (ApA), American Psychological Association (APA), and the Council on Social Work Education (CSWE). These professional organizations have unique access to students entering their respective professions. The fields of psychiatric nursing, psychiatry, psychology, and social work have been recognized nationally for decades as the four core behavioral health disciplines, providing part of an essential core of services for individuals with serious mental illness and also less severe mental disorders. The ANA, ApA, and APA are the largest national professional organizations in the country for nursing, psychiatry, and psychology, respectively. The ANA, ApA, and APA and their affiliates have activities in all major areas of national policies affecting nursing, psychiatry, and psychology as professions, including education and training. In the field of social work, the CSWE is the leading national organization that focuses just on the education and training of social workers, and it maintains a close working relationship with the National Association of Social Workers, the largest professional social work organization in the country.

All four organizations, the ANA, ApA, APA, and CSWE, along with their affiliates, have direct involvement in curriculum development, school accreditation, and pre-/post-doctoral training. All four have had decades of experience in working directly with university training programs from which the pools of participants are selected. These are the only organizations that have the infrastructure and expertise in place to administer this program. They already have mechanisms and databases in place to identify minority students. All four organizations have developed relationships with appropriate minority professional organizations that may serve as useful liaisons; for instance, APA has developed relationships with the Association of Black Psychologists, Native American Psychological Association, Hispanic Psychological Association, and Asian American Psychological Association. Each organization assists APA in identifying pools of qualified applicants.

Because of their unique characteristics and long history, these four organizations, the ANA, ApA, APA, and CSWE, were chosen more than 25 years ago as the exclusive representatives for education/training in their respective fields. During that time, they have administered their MFP programs exceptionally well. They have recruited excellent students, assured that all program requirements were satisfied, and effectively monitored the progress of fellows during and after the fellowship period. Their MFP Fellows have been successful in addressing the MFP goals of providing leadership in the delivery of mental health/substance abuse services to ethnic minority communities. These MFP grantees continue to operate in their unique position of representing this core mental

health and substance abuse discipline exceptionally well. Therefore, eligibility has been restricted to only these four organizations.

2. Cost-Sharing

Cost-sharing is not required in this program, and applications will not be screened out on the basis of cost-sharing.

3. Other

Applications must comply with the following requirements or they will be screened out and will not be reviewed: Use of the PHS 5161–1 application; application submission requirements in section IV–3 of this document; and formatting requirements provided in section IV–2.3 of this document.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix A of this document.)

1. Address To Request Application Package

An application will be sent to each of the four eligible applicants. Also, you may request a complete application kit by calling one of SAMHSA's national clearinghouses:

• For substance abuse prevention or treatment grants, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.

• For mental health grants, call the National Mental Health Information Center at 1–800–789–CMHS (2647).

You also may download the required documents from the SAMHSA Web site at *www.samhsa.gov.* Click on "grant opportunities.''

Additional materials available on the SAMHSA Web site include:

• A technical assistance manual for potential applicants;

• Standard terms and conditions for SAMHSA grants;

• Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and

• Enhanced instructions for completing the PHS 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

• PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. You must use the PHS 5161–1. Applications that are not submitted on the PHS 5161–1 will be screened out and will not be reviewed.

• Request for Applications (RFA)—Provides specific information about the availability of funds, along with instructions for completing the grant application. This document is the RFA. The RFA will be available on the SAMHSA Web site (*www.samhsa.gov*). You must use all of the above documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten components: (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist.

• *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1.

Note: Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *www.dunandbradstreet.com,* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.

• *Abstract*—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reports to Congress, or press releases.

• *Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.

• *Budget Form*—Use SF 424A, which is part of the 5161–1. Fill out sections B, C, and E of the SF 424A.

• *Project Narrative and Supporting Documentation*—The Project Narrative describes your project. It consists of sections A through C. These sections in total may not be longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information'' of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections D through G. There are no page limits for these sections, except for Section F, Biographical Sketches/Job Descriptions.

• *Section D*—Literature Citations. This section must contain complete citations, including titles and all authors, for any literature you cite in your application.

• *Section E*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. Be sure to show that no more than 20% of the total grant award will be used for data collection and evaluation.

• *Section F*—Biographical Sketches and Job Descriptions.

—Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.

—Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

—Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• *Section G*—Confidentiality and SAMHSA Participant Protection/Human Subjects. Section IV–2.4 of this document describes requirements for the protection of the confidentiality, rights and safety of participants in SAMHSA-funded activities. This section also includes guidelines for completing this part of your application.

Appendices 1 through 9—Use only the appendices listed below. Do not use more than 30 pages for Appendices 1, 3, 4, 6, 8 and 9. There are no page limitations for Appendices 5 and 7. Do not use appendices to extend or replace any of the sections of the Project Narrative unless specifically required in the NOFA. Reviewers will not consider them if you do.

—*Appendix 1:* Letters of Coordination/Support

—*Appendix 2:* Literature Citations

—*Appendix 3:* Sample Consent Forms

—*Appendix 4:* Letter to the SSA (if applicable; *see* Section IV–4 of this document)

—*Appendix 5:* Employment of Past Fellows

—*Appendix 6:* Students Entering and Leaving Program
—*Appendix 7:* Current Fellows
—*Appendix 8:* Evaluation of the Program
—*Appendix 9:* Implementation Schedule

• *Assurances*—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1.

• *Certifications*—Use the ''Certifications'' forms found in PHS 5161–1.

• *Disclosure of Lobbying Activities*—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes ''grass roots'' lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

• *Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

• Information provided must be sufficient for review.

• Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

• Paper must be white paper and 8.5 inches by 11.0 inches in size.

• To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 25-page limit for the Project Narrative.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 25. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

• The 30-page limit for Appendices 1, 3, 4, 6, 8 and 9 cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

• Pages should be typed single-spaced with one column per page.

• Pages should not have printing on both sides.

• Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

• Send the original application and two copies to the mailing address in section IV–6.1 of this document. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

2.4 SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

You must describe your procedures relating to Confidentiality and Participant Protection and the Protection of Human Subjects Regulations in Section G of your application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of your application may result in the delay of funding.

Confidentiality and Participant Protection. All applicants *must* address each of the following elements relating to confidentiality and participant protection. You must document how you will address these requirements or why they do not apply.

(1) Protection of Clients and Staff from Potential Risks

• Identify and describe any foreseeable physical, medical, psychological, social, legal, or other risks or adverse effects.

• Discuss risks that are due either to participation in the project itself or to the evaluation activities.

• Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.

• Identify plans to provide help if there are adverse effects on participants.

• Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

(2) Fair Selection of Participants

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other groups.

• Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, or others who are likely to be vulnerable to HIV/AIDS.

• Explain the reasons for *including or excluding* participants.

• Explain how you will recruit and select participants. Identify who will select participants.

(3) Absence of Coercion

• Explain if participation in the project is voluntary or required. Identify possible reasons why it is required (*e.g.*, court orders requiring people to participate in a program).

• If you plan to pay participants, state how participants will be awarded money or gifts.

• State how volunteer participants will be told that they may receive services even if they do not participate in the project.

(4) Data Collection

• Identify from whom you will collect data (*e.g.*, participants themselves, family members, teachers, or others). Describe the data collection procedures and specify the sources for obtaining

data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.

(5) Privacy and Confidentiality

• Explain how you will ensure privacy and confidentiality. Identify who will collect data and how it will be collected.

• Describe:

—How you will use data collection instruments.
—Where data will be stored.
—Who will or will not have access to information.
—How the identity of participants will be kept private (*e.g.*, using a coding system on data records, limiting access to records, or storing identifiers separately from data).

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records, according to the provisions of title 42 of the Code of Federal Regulations, part II.

(6) Adequate Consent Procedures

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used, and how you will keep the data private.

• State:

—Whether or not participation is voluntary.
—The right of participants to leave the project at any time without problems.
—Possible risks from participation in the project.
—Plans to protect clients from these risks.

• Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social, or other risks, you must get *written* informed consent.

• Indicate if you will get informed consent from participants or from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include, as appropriate, sample consent forms that provide for: (1) Informed consent for participation in service intervention; (2) informed consent for participation in the data collection component of the project; and (3) informed consent for the exchange (releasing or requesting) of confidential information. The sample forms must be included in Appendix 3, ''Sample Consent Forms'', of your application. If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe, if separate consents will be obtained for different stages or parts of the project. For example, will consents be needed for both participant protection in treatment intervention and for the collection and use of data?

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

(7) Risk/Benefit Discussion

Discuss why the risks are reasonable when compared with the expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations. Applicants may have to comply with the Protection of Human Subjects Regulations (45 CFR 46), depending on the evaluation and data collection requirements of the particular funding opportunity for which the applicant is applying or the evaluation design proposed in the application. The NOFA will indicate whether all applicants for a particular funding opportunity must comply with the Protection of Human Subject Regulations.

Applicants must be aware that even if the Protection of Human Subjects Regulations do not apply to all projects funded under a given funding opportunity, the specific evaluation design proposed by the applicant may require compliance with these regulations.

Applicants whose projects must comply with the Protection of Human Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and that IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the Web at *http://ohrp.osophs.dhhs.gov.* You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

3. Submission Dates and Times

Applications are due by close of business on June 7, 2004. Your application must be received by the application deadline. Applications sent through postal mail and received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and is available at *www.whitehouse.gov/omb/grants/spoc.html*

• Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.

• If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.

• For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

• The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SPOC—Funding Announcement No. SM 04–001.

In addition, community-based, non-governmental service providers who are not transmitting their applications through the State must submit a Public Health System Impact Statement (PHSIS) (approved by OMB under control no. 0920–0428; see burden statement below) to the head(s) of appropriate State or local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. The PHSIS is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. *State and local governments and Indian tribal government applicants are not subject to these requirements.*

The PHSIS consists of the following information:

• A copy of the face page of the application (SF 424); and

• A summary of the project, no longer than one page in length, that provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's Web site at *www.samhsa.gov.* If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA *must* include a copy of a letter transmitting the PHSIS to the SSA in Appendix 4, "Letter to the SSA.'' The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days after the application deadline to: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SSA—Funding Announcement No. [fill in pertinent funding opportunity number from NOFA].

In addition:

• Applicants may request that the SSA send them a copy of any State comments.

• The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. 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 number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333, ATTN: PRA (0920–0428).]

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

• Institutions of Higher Education: OMB Circular A–21.

• State and Local Governments: OMB Circular A–87.

• Nonprofit Organizations: OMB Circular A–122.

• Appendix E Hospitals: 45 CFR Part 74.

In addition, SAMHSA MFP grant recipients must comply with the following funding restrictions:

• Grant funds must be used for purposes supported by the program.

• No more than 10 percent of the grant award may be used for evaluation and data collection expenses.

• Grant funds may not be used to pay for the purchase or construction of any building or structure to house any part of the grant project.

6. Other Submission Requirements

6.1 Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857.

Be sure to include the name of the program: Minority Fellowship Program and the RFA #: SM 04–001 in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How To Send Applications

Mail an original application and two copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand-carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Your application will be reviewed and scored against the requirements listed below for developing the Project Narrative (Sections A–C). These sections describe what you intend to do with your project.

• In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative'' instructions found in the PHS 5161–1.

• You must use the four sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section.

• Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA Web site at *www.samhsa.gov.* Click on "Grant Opportunities.''

• The Supporting Documentation you provide in Sections D-G and Appendices 1–9 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.

The number of points after each heading below is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within each section.

Section A: Project Description With Supporting Documentation (30 Points)

Statement of the Problem/Issues: Describe the problem/issue that will be addressed relevant to the program goals and target populations. Provide data about the supply of and demand for behavioral health professionals to serve minority populations, including specific

information for the subgroups, as listed in the Introduction section on page four. The applicant also should demonstrate a need to resolve the problem/issue and the potential impact if not resolved.

Target Population: The applicant should define both target populations as listed in the Expectations section on page four.

Purpose and Goals: Provide a comprehensive framework and description of all aspects of the proposed project. More specifically:

(1) Clearly state the purpose of the proposed project and how it will address the stated problem/issue and achieve the goals of the MFP.

(2) State the goals and objectives, using an outline form, including specific recruitment goals for each minority population.

(3) Clearly state how the proposed project will contribute to the field, including innovations to increase the supply of, and to recruit, retain, and prepare graduate students to serve the most vulnerable minority populations.

Section B: Project Plan (40 Points)

Design: Describe specific approaches for accomplishing each of the goals outlined in the Purpose and Goals section above. These approaches should include a comprehensive implementation plan to meet the overall MFP goals. All applications must address the four areas below. In addition, the application may include other activities to meet MFP goals within available funding levels.

(1) *General:* The application should include the following:

a. A description of the content, methods, and organization of the training program in relation to the program goals.

b. A strategy of recruitment based on greatest demonstrated need, *e.g.,* that bilingual/bicultural applicants may be in short supply.

c. An explanation of how didactic and experiential learning opportunities (*e.g.,* clinical training and/or field work) will be provided in the following areas: linguistic and cultural sensitivity and competencies; services to minorities with mental health and substance abuse disorders and one or more additional underserved priority populations, including adults with serious mental illness, children with serious emotional disturbance, older adults and minority populations with mental health and substance abuse disorders living in rural communities; and services research.

d. A description of how MFP fellows will be trained for leadership roles (*i.e.,* administrative, services research, or program development).

e. A description of how opportunities for enrichment activities, professional socialization, and other networking will be provided in the training settings.

f. The criteria for eligibility in the MFP and a rationale for these criteria.

g. A description of how the design is culturally competent.

h. A description of consumer involvement in training programs.

i. A description of innovations to increase the supply of qualified applicants.

(2) *Fellows:* The applicant also must provide a plan for:

a. Providing counseling to potential applicants to assist them in their election of training institutions. The plan should identify admissions requirements of the institutions.

b. Describing the methods for recruiting and selecting candidates and methods for enhancing the supply of, and the retention and graduation, of fellows.

c. Monitoring fellows' clinical and research training/experiences to ensure they complete the program. The plan should describe reporting requirements from the training institutions.

d. Providing support and supervision of the fellows, including a description of reporting and evaluation requirements from the fellows and a summary of findings from past evaluations.

e. Monitoring practices and internships to ensure that fellows obtain optimal mental health and substance abuse training related to the target populations.

f. Monitoring the requirement that fellows focus their dissertation topics on the needs of minorities with mental health and substance abuse disorders and other underserved populations (children, adolescents, elderly, rural populations).

(3) *Training Record:* The applicant must provide a record of fellows that have been in the MFP over the last 10 years (including the current grant year). The report must provide:

a. In both summary and tabular form, in Appendix 5, Employment of Past Fellows, a list of types of jobs, especially those related to public mental health and addictions services to underserved populations, locations, other professional activities, etc.

b. In Appendix 6, Students Entering and Leaving Program, reporting by year, sex, and ethnicity, the numbers of students admitted to the program, graduated, terminated before graduation, still in training, and disabled.

c. In Appendix 7, Current Fellows, a description and list of fellows, by ethnicity and gender, who were admitted to the program during this period and those currently in training.

d. An historical rate of attrition in the discipline's MFP and efforts to deal with this important training issue.

(4) *Evaluation of the Program:* Provide an evaluation plan in Appendix 8 to assess the project's achievement of program goals. In particular, the plan should describe how the applicants are selected to ensure that different ethnic minority populations are represented.

Section C. Project Management: Implementation Plan, Organization, Staff, Equipment/Facilities, and Other Support (30 Points)

Implementation Plan: Describe in Appendix 9, Implementation Schedule, the management/implementation schedule for this project. Complete an implementation plan time line that includes specific activities, target dates for completion, and responsible staff.

Organization: Appendix 1, Letters of Coordination/Support, should document collaborative capacity or efforts to collaborate with other organizations, including minority, mental health, substance abuse, etc. Describe the administrative program structure and distribution of responsibilities.

Staff: Describe the proposed staffing plan, and specify how the proposed staffing pattern and qualifications and experience of the staff and Advisory Committee are appropriate and adequate for implementation of the project. Explain how staff is culturally competent in relation to the students they will be recruiting.

Equipment/Facilities: Describe the adequacy and availability of resources, and provide evidence that the activities and services are accessible.

Other Support: If applicable, describe any additional resources that will be utilized to implement this project.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the budget after the merits of the application have been considered.

2. Review and Selection Process

SAMHSA applications are peer-reviewed, according to the review criteria listed above. For those programs where the individual award is more than $100,000, applications also must be reviewed by the appropriate National Advisory Council.

Decisions to fund a grant are based on:

- Strengths and weaknesses of the application, as identified by the Peer Review Committee and, when

necessary, approved by the appropriate National Advisory Council;

• Availability of funds;

• After applying the aforementioned criteria, the following method for breaking ties: When funds are not available to fund all applications with identical scores, SAMHSA will make award decisions based on the application(s) that received the greatest number of points by peer reviewers on the evaluation criterion in Section V–1 with the highest number of possible points, Section B. Project Plan (40 points). Should a tie still exist, the evaluation criterion with the next highest possible point value will be used, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties. If an evaluation criterion to be used for this purpose has the same number of possible points as another evaluation criterion, the criterion listed first in Section V–1 will be used first.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can reapply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

2.1 General Requirements

• You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site at *www.samhsa.gov/grants/2004/useful_info.asp.*

• Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be identified in the NOFA or negotiated with the grantee prior to grant award. These may include, for example:

—Actions required to be in compliance with human subjects requirements;
—Requirements relating to additional data collection and reporting;
—Requirements relating to participation in a cross-site evaluation; or
—Requirements to address problems identified in review of the application.

• You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.

• In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants.'' This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

• Grantees must provide annual and final progress reports. The final progress report must summarize information from the annual reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.

• Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents. Since SAMHSA is extremely interested in ensuring that infrastructure development and enhancement efforts can be sustained, your financial reports must explain plans to ensure the sustainability of efforts initiated under this grant. Initial plans for sustainability should be described in year 1 of the grant. In each subsequent year, you should describe the status of the project, successes achieved, and obstacles encountered in that year.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after the award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Government Performance and Results Act

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data'') from grantees. The performance requirements for SAMHSA's MFP grants are described in Section I–2.2 under "Data and Performance Measurement'' of this document.

3.3 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

• Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts for Additional Information

For questions about program issues, contact:

Paul Wohlford, Ph.D., Project Officer, Div. of State & Community Systems Development, Center for Mental Health Services, 5600 Fishers Lane, Room 15C–26, Rockville, MD 20857, (301) 443–3503, E-Mail: *pwohlfor@samhsa.gov.*

or:

Herbert Joseph, Ph.D., M.P.H., Alternate Project Officer, Div. of State & Community Systems Development, Center for Mental Health Services, 5600 Fishers Lane, Room 15C–26, Rockville, MD 20857, (301) 443–4257, E-Mail: *hjoseph@samhsa.gov.*

For questions on grants management issues, contact: Gwendolyn Simpson, SAMHSA/Division of Grants Management, 5600 Fishers Lane, Room 13–103, Rockville, MD 20857, (301) 443–4456, E-mail: *gsimpson@samhsa.gov.*

Appendix A—Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.,* relating to eligibility) may be stated in the specific funding announcement. Please check the entire funding announcement before preparing your application.

- Use the PHS 5161–1 application.
- Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.
- Information provided must be sufficient for review.
- Text must be legible.
- Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)
- Text in the Project Narrative cannot exceed 6 lines per vertical inch.
- Paper must be white paper and 8.5 inches by 11.0 inches in size.
- To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.
- Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.
- Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the total number of allowed pages. This number represents the full page less margins, multiplied by the total number of allowed pages.
- Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.
- The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

- The 10 application components required for SAMHSA applications should be included. These are:
- Face Page (Standard Form 424, which is in PHS 5161–1)
- Abstract
- Table of Contents
- Budget Form (Standard Form 424A, which is in PHS 5161–1)
- Project Narrative and Supporting Documentation
- Appendices
- Assurances (Standard Form 424B, which is in PHS 5161–1)
- Certifications (a form in PHS 5161–1)
- Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)
- Checklist (a form in PHS 5161–1)
- Applications should comply with the following requirements:
- Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the specific funding announcement.
- Budgetary limitations as specified in Sections I, II, and IV–5 of the specific funding announcement.
- Documentation of nonprofit status as required in the PHS 5161–1.
- Pages should be typed single-spaced with one column per page.
- Pages should not have printing on both sides.
- Please use black ink, and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
- Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix B: Performance Indicators for the Minority Fellowship Program (MFP)

Training Record: The applicant must provide a record of all fellows in the MFP over the last 10 years (including the current grant year). The report must include the following:

Employment of Past Fellows

Provide, in both summary and tabular form, in Appendix 5, Employment of Past Fellows, a list of types of jobs, especially those related to mental health and addictions services to underserved populations, public/private locations, other professional activities, etc.

Attrition of Students From Training Programs

Attrition of Students from Training Programs is calculated from Appendix 6, Students Entering and Leaving Program. Provide information about all students, reporting by year, sex, and ethnicity the numbers of students admitted to the program, graduated, terminated before graduation, still in training, and disabled. Also, provide an historical rate of attrition in the discipline's MFP and efforts to deal with this important training issue.

Current Fellows

Provide in Appendix 7, Current Fellows, a description and list of fellows, by ethnicity and gender, who were admitted to the program during this period and those currently in training.

Evaluation of the Program

Provide an evaluation plan to assess the project's achievement of program goals in Appendix 8. In particular, the plan should describe how the applicants are selected to ensure that different ethnic minority populations are represented.

Appendix C: Trainee Stipends

Stipends are intended to assist trainees in meeting subsistence expenses and to enable them to pursue training on a full-time basis. The amount of this stipend is generally determined by the academic status of the appointee. Stipends for full-time trainees enrolled in training programs leading to or based on a degree are as follows (NIH, 3/7/03):

Career level	Stipend for FY 2003
Undergraduates:	
Freshmen/Sophomores	$ 7,296
Juniors/Seniors	10,224
Pre-doctoral	19,968
Post-doctoral	
Years of Relevant Experience	
0	$34,200
1	36,108
2	40,920
3	42,648
4	44,364
5	46,404
6	48,444
7 or more	50,808

For purposes of determining appropriate stipend levels for subsequent years, prior years under a SAMHSA clinical training grant will count as "years of relevant experience.'' Relevant experience is considered to be activities beyond the

doctoral degree such as an internship, residency, teaching, or providing services in the specific area of training, etc. For trainees who receive a SAMHSA training program stipend award for the first time in a second or later year of study, the level of support shall be determined by the relevant experience gained before initial entry into the program, plus another year of experience for each year already spent in full-time participation in the program.

Stipends for full-time trainees enrolled in programs that are not degree-related may be paid commensurate with the trainee's career status and experience in accordance with the above schedule. Maximum support for any trainee is $44,412 per year, prorated according to the length of the program.

For the MFP, the above rates may be used as ceilings rather than as levels. This deviation has been permitted to allow MFP training directors with the flexibility to use stipends to support greater numbers of trainees under these grants.

Other Trainee Costs

In addition to stipends, the applicant may request funds for trainee travel. Trainee travel costs are allowable only between the training institution and field training sites. The MFP applicant may request travel for trainees to attend professional meetings.

Dated: April 1, 2004.

Daryl Kade,

Director, Office of Policy Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–7816 Filed 4–6–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Under Secretary for Management; Submission for Review; Extension of Currently Approved Information Collection Requests for Various Contract Related Forms, Post-Contract Award, Regulation on Agency Protests, and Solicitation of Proposal Information for Award of Public Contracts

AGENCY: Office of the Under Secretary for Management, Department of Homeland Security.

ACTION: Notice; 30-day notice of information collections under review.

SUMMARY: The Department of Homeland Security (DHS) has submitted the following information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995: 1600–0002 (various contract related forms (DHS Forms 0700–01 through 0700–05)), 1600–0003 (Post-Contract Award Information), 1600–0004 (Regulation on Agency Protests), and 1600–0005 (Solicitation of Proposal Information for Award of Public Contracts). The information collections were previously published in the **Federal Register** on November 20, 2003, at 68 FR 65462, allowing for OMB review and a 60-day public comment period. Comments received by DHS are being reviewed as applicable. The purpose of this notice is to allow an additional 30 days for public comments on the information collections under review.

DATES: Comments are encouraged and will be accepted until May 7, 2004.

ADDRESSES: Office of Management and Budget, Attn: Desk Officer for Homeland Security, Office of Management and Budget Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Yvonne Pollard, (202) 692–4221 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Written comments and/or suggestions regarding the items contained in this notice should be directed to the Office of Management and Budget at the above address. This process is conducted in accordance with 5 CFR 1320.10. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Paperwork Reduction Act Contact listed above.

The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight.

Title: Various contract related forms (DHS Forms 0700–01 through 0700–05).

OMB No.: 1600–0002.

Frequency: On occasion.

Affected Public: Business or other for profit and individuals and households.

Estimated Number of Respondents: 3,428 respondents.

Estimated Time Per Respondent: 1 hour per response.

Total Burden Hours: 3,428.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Agency: Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight.

Title: Post-Contract Award Information.

OMB No.: 1600–0003.

Frequency: On occasion.

Affected Public: Business or other for profit, individuals or households and Federal Government.

Estimated Number of Respondents: 5,574.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 78,036.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Agency: Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight.

Title: Regulation on Agency Protests.

OMB No.: 1600–0004.

Frequency: On occasion.

Affected Public: Business or other for profit and individuals or households.

Estimated Number of Respondents: 54.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 108.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

*Agency:*Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight.

Title: Solicitation of Proposal Information for Award of Public Contracts.

OMB No.: 1600–0005.

Frequency: On occasion.

Affected Public: Business or other for profit, individuals or households, Federal Government, and State, Local, or Tribal Government.

Estimated Number of Respondents: 7,584.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 106,176.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Description: The information collections under the Homeland Security Acquisition Regulation (HSAR) are necessary in order to implement applicable parts of the Federal Acquisition Regulation (FAR) for administering public contracts for supplies and services, providing detailed guidance for contractors doing business with DHS acquisition offices, and when inviting firms to submit proposals for public contracts for supplies and services to the Department of Homeland Security.

Dated: April 1, 2004.

Steve Cooper,

Chief Information Officer.

[FR Doc. 04–7875 Filed 4–6–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Under Secretary for Management; Submission for Extension of a Currently Approved Information Collection Request (Product and Service Information Site)

AGENCY: Office of the Under Secretary for Management, Department of Homeland Security.

ACTION: Notice; 60-day notice request for comments.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on approved information collection request (ICR) OMB 1600–0001, Product and Service Information Site. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), DHS is soliciting comments for the approved information collection request.

DATES: Written comments should be received on or before June 7, 2004 to be assured consideration.

ADDRESSES: Office of the Chief Information Officer, Attn: Thomas Bold, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528 and Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Yvonne Pollard, (202) 692–4221 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Direct all written comments to both the Department of Homeland Security and the Office of Information and Regulatory Affairs at the above addresses. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Paperwork Reduction Act Contact listed above.

The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Under Secretary of Management, Office of the Chief Information Officer.

Title: Product and Service Information Site.

OMB Number: 1600–0001.

Frequency: On occasion.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions; farms, State, local or tribal government.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 30 minutes for startup; 30 minutes for maintaining.

Total Burden Hours: 20,000.

Total Burden Cost: (capital/startup): $25.00 per respondent; $500,000 annually.

Total Burden Cost: (operating/maintaining): $25.00 per respondent, $500,000 annually.

Description: The Product and Service Information site is a supplement of the Central Contractor Registration database that will provide a uniform voluntary way for companies to provide descriptions of their product-and-service ideas to DHS for enhancing homeland security.

Dated: April 1, 2004.

Steve Cooper,

Chief Information Officer.

[FR Doc. 04–7876 Filed 4–6–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 30-day notice of information collection under review; national interest waivers; supplemental evidence to I–140 and I–485.

The Department of Homeland Security, U.S. Citizenship and Immigrations Services (CIS) has submitted the following information collection request for emergency review and reinstatement in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 13, 2004, at 69 FR 1989, allowing for a 60-day public comment period. No comments were received by the CIS on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 7, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* National Interest Waivers; Supplemental Evidence to I–140 and I–485.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* No agency form number; File No. OMB–22. U.S. Citizenship and Immigration Services.

(4) *Affected Public Who Will be Asked or Required to Respond, as Well as a Brief Abstract: Primary:* Individuals or households. The information collected via the submitted supplemental documentation will be used by the U.S. Citizenship and Immigration Services to determine eligibility for the request national interest waiver and to finalize the request for adjustment to lawful permanent resident status.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 8,000 responses at one (1) hour per response.

(6) *An Estimate of the Total Public Burden (in Hours) Associated with the Collection:* 8,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4304, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of the Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4636–26, Washington, DC 20202.

Dated: April 2, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services.

[FR Doc. 04–7892 Filed 4–6–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Timbisha Shoshone Tribe's Trust Acquisition and Casino Project, San Bernardino County, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), with the cooperation of the Timbisha Shoshone Tribe (Tribe), intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for a proposed 58+ acre trust acquisition and casino development project to be located in the City of Hesperia, San Bernardino County, California. The purpose of the proposed action is to help provide for the economic development of the Tribe. This notice also announces a public scoping meeting to identify potential issues and content for inclusion in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by May 5, 2004. The public scoping meeting will be held April 21, 2004, from 6 to 9 p.m., or until the last public comment has been submitted.

ADDRESSES: You may mail or hand carry written comments to Clay Gregory, Acting Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. The public scoping meeting will be held at the Percy Bakker Senior Center, 9393 E Avenue, Hesperia, California.

FOR FURTHER INFORMATION CONTACT: William Allan, (916) 978–6043.

SUPPLEMENTARY INFORMATION: The Tribe proposes that a 58+ acre parcel of land be taken into trust and that a casino, parking, hotel, and other facilities supporting the casino be built on the property. The project site is located west of Interstate 15, south of Main Street, and immediately east of Mesa Linda Street inside the incorporated City of Hesperia, San Bernardino County. It is within 3 miles of Main Street and Interstate 15. The City of Victorville is located approximately 8 miles north of the project site, which is also accessible from Interstate 15.

Phase I of the proposed action includes the development of a 182,000+ square foot casino complex, which would consist of a porte cochere, an approximately 61,000 square foot main gaming hall, food and beverage facilities, small retail shops, and administrative space. Approximately 3,406 parking spaces would be provided for the complex. Primary access to the complex would be via Interstate 15.

Phase II of the proposed action includes the construction of an approximately 300-room hotel with a dual plumbing system for the use of potable and recycled water. Approximately 180 parking spaces would be dedicated for the hotel. The hotel is anticipated to be operational no sooner than the middle of year 3–4 of the project. Primary vehicle access to the hotel would be via the main casino and surface-parking driveway.

Areas of environmental concern to be addressed in the EIS include land use, geology and soils, water resources, agricultural resources, biological resources, cultural resources, mineral resources, paleontological resources, traffic and transportation, noise, air quality, public health/environmental hazards, public services and utilities, hazardous waste and materials, socio-economics, environmental justice, and visual resources/aesthetics. The range of issues addressed may be expanded based on comments received during the scoping process.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. 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.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and

the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: March 26, 2004.

Dave Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–7935 Filed 4–6–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST, ES–052133, Group No. 169, Minnesota]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Eastern States Office, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 144 N., R. 42 W.

The plat of survey represents the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of section 13, Township 144 North, Range 42 West, Fifth Principal Meridian, in the state of Minnesota, and was accepted March 31, 2004. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: March 31, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–7886 Filed 4–6–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST, ES–052134, Group No. 172, Minnesota]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Eastern States Office, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 143 N., R. 42 W.

The plat of survey represents the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of section 36, Township 143 North, Range 42 West, Fifth Principal Meridian, in the state of Minnesota, and was accepted March 31, 2004. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: March 31, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–7887 Filed 4–6–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–04–1910–BJ–4360]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5121 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the U.S. Forest Service and was necessary to delineate Forest Service lands. The lands we surveyed are:

Principal Meridian, Montana

Tps. 3 S., Rs. 11 and 12 E.

The plat, in three sheets, representing the dependent resurvey of portions of the south boundary, the east boundary, and the subdivisional lines (including section 19, Township 3 South, Range 12 East), the adjusted original meanders of the former left and right banks of the South Fork of the Cheyenne River, through sections 24, 25, 35, and 36 (and sections 19 and 30, Township 3 South, Range 12 East), an island situated in the South Fork of the Cheyenne River, a certain partition line and the subdivision of sections 25, 26, and 35 and the survey of the medial line of an abandoned channel of the South Fork of the Cheyenne River, a certain partition line, a portion of a medial line of a relicted channel of the South Fork of the Cheyenne River, certain division of accretion lines, and portions of the meanders of the present left and right banks of the South Fork of the Cheyenne River, through sections 24, 25, 35, and 36 (and sections 19 and 30, Township 3 South, Range 12 East) in Townships 3 South, Ranges 11 and 12 East, Black Hills Meridian, South Dakota, was accepted March 31, 2004.

We will place copies of the plat, in 3 sheets, and related field notes we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in three sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in three sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: April 1, 2004.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 04–7888 Filed 4–6–04; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–441 and 731–TA–1081 (Preliminary)]

Silicon Metal From Brazil and South Africa

AGENCY: International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–441 (Preliminary) and antidumping investigation No. 731–TA–1081 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of silicon metal, provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Brazil, and by reason of such imports from South Africa that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in countervailing duty and antidumping investigations in 45 days, or in this case by May 17, 2004. The Commission's views are due at Commerce within five business days thereafter, or by May 24, 2004.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on March 31, 2004, by Globe Metallurgical Inc., Beverly, OH; the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, I.U.E.–C.W.A., AFL–CIO, C.L.C., Local 693; and the United Steelworkers of America, AFL–CIO, Local 9436.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. 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 countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, April 21, 2004, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than April 19 to list their appearance and witnesses (if any). Parties in support of the imposition of countervailing or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 26, 2004, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 1, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7844 Filed 4–6–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Frank Acierno and Christiana Excavating Co., Inc.,* D. Del., Civil Action No. 03–020, was lodged with the United States District Court for the District of Delaware on December 15, 2003.

This proposed Consent Decree concerns a complaint filed by the United States against Frank Acierno and Christiana Excavating Company, Inc., pursuant to Section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from, and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring that Defendant Frank Acierno pay a civil penalty and fund supplemental environmental projects.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Patricia C. Hannigan, Assistant United States Attorney, 1007 Orange Street, Suite 700, P.O. Box 2046, Wilmington, Delaware, 19899–2046, and refer to United States v. Frank Acierno and Christiana Excavating Company, Inc.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Delaware, 844 King Street, Room 3124, Wilmington, Delaware 19801. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

Russell M. Young,

Assistant Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 04–7901 Filed 4–6–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day emergency notice of information collection under review: drug questionnaire.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by April 15, 2004. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until June 7, 2004.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Senior Inspector Stephen G. Griswold, Drug Enforcement Administration, 2401 Jefferson Davis Highway, Alexandria, VA 22301 or facsimile (202) 307–8256.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Drug questionnaire.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: DEA Form 341. Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Applicants for Employment with the Drug Enforcement Administration. Other: None. The Drug Enforcement Administration has stated, as a matter of policy, that a past history of illegal drug use may be disqualifying for employment with the DEA. This form seeks, directly from applicants for positions at DEA, information pertaining to personal history of illegal drug use.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 30,000 respondents will each take 5 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual public burden associated with this application is 2500 hours.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 1, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–7814 Filed 4–6–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application for Permit to Import Controlled Substances for Domestic and/or

Scientific Purposes pursuant to 21 U.S.C. 952 (DEA Form 357).

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 7, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7295.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Permit To Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952 (DEA Form 357).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 357. Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Title 21, CFR, Section 1312.11 requires any registrant who desires to import certain controlled substances into the United States to have an import permit. In order to obtain the permit, an application must be made to the Drug Enforcement Administration on DEA Form 357.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 49 respondents who may submit multiple responses, totaling approximately 353 responses. A respondent will take an estimated 15 minutes to complete each form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 88 annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 9, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–7852 Filed 4–6–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Law Enforcement Officers Killed or Assaulted.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 205, page 60714 on October 23, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 7, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Report of Public Safety Officer's Death.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* From Number: None. Bureau of Justice Assistance, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief*

abstract: Primary: State, Local, or Tribal Government. Other: Federal Government. This information collection is required to carry out the functions of the PSOB Program. The program provides a one-time benefit of $250,000 (adjusted for cost-of-living) to the eligible survivors of local, state, and federal public safety officers whose deaths result from injuries sustained in the line of duty. The Report of Public Safety Officer's Death form is completed by the employing agency. Supporting documentation is filed with the Bureau of Justice Assistance to assist in determining eligibility of spouses, children, and/or parents of deceased public safety officers in obtaining benefits. The form includes information necessary to determine that the circumstances of death meet the requirements prescribed in 42 U.S.C. 3796.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that each of the 320 respondents will complete the application in approximately 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimate total public burden associated with this application is 800 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 1, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–7853 Filed 4–6–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: Federal Bureau of Prisons, U.S. Department of Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for development of a medium-security federal correctional institution by the U.S. Department of Justice, Federal Bureau of Prisons. The area under consideration for correctional facility development consists of sites in the City of Berlin, Coös County, New Hampshire.

Background

The Federal Bureau of Prisons (BOP) is responsible for carrying out judgments of the federal courts whenever a period of confinement is ordered. The mission of the BOP is to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

As of March 30, 2004, approximately 148,655 inmates are housed within the 105 Federal correctional facilities that have levels of security ranging from minimum to maximum. At the present time, the Federal inmate population exceeds the combined rated capacities of the 105 Federal correctional facilities.

The continuing inmate population is due in part to Federal court sentencing guidelines which are resulting in longer terms of confinement for serious crimes. The increase in the number of immigration offenders and the effort to combat organized crime and drug trafficking are also contributing to a continuing inmate population increase. Measures being undertaken to manage the growth of the Federal inmate population include construction of new institutions, acquisition and adaption of facilities originally intended for other purposes, expansion and improvement of existing correctional facilities, and expanded use of contract beds. Adding capacity through these various means allows the BOP to work towards the long-term goal of managing our inmate population growth.

In the face of the continuing increase in the Federal prison population, one way the BOP has extended its capacity is through construction of new facilities. As part of this effort, the BOP has a facilities planning program featuring the identification and evaluation of sites for new facilities. The BOP routinely identifies prospective sites that may be appropriate for development of new Federal correctional facilities. Locations of new Federal correctional facilities are determined by the need for such facilities in various parts of the country and the resources available to meet that need.

The BOP routinely screens and evaluates private and public properties located throughout the nation for possible use and development. Over the past decade, the BOP has examined prospective sites for new correctional facilities development in Kentucky, Virginia, Pennsylvania, West Virginia, North Carolina, South Carolina, California, Florida, Arizona, Indiana, Mississippi, Arkansas, and Louisiana among other locations around the country and has undertaken environmental impact studies in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended.

Proposed Action

The BOP is facing increased bedspace shortages throughout the Federal prison system. Over the past decade, a significant influx of inmates has entered the Federal prison system with a large portion of this influx originating from the northeast. In response, the BOP has committed significant resources to identifying and developing sites for new Federal correctional facilities within this region including construction of facilities in Devens, Massachusetts, and Canaan Township, Pennsylvania, and expansions and/or improvements to correctional facilities located at Fort Dix, New Jersey, and Otisville, New York. Even with the development of these new and expanded facilities, projections show the Federal inmate population continuing to increase, placing additional demands for bedspace within the northeast.

In response, the BOP has undertaken investigations in Pennsylvania and New Hampshire in an effort to identify prospective sites capable of accommodating Federal correctional facilities and communities willing to host such facilities. Through this process, officials representing Berlin, New Hampshire, identified potential locations for development of a medium-security Federal correctional institution and offered several sites for BOP consideration. These potential sites were subjected to initial studies by the BOP and those considered suitable for correctional facility development will be evaluated further by the BOP in a DEIS that will analyze the potential impacts of facility construction and operation.

The BOP is proposing to build and operate in New Hampshire a medium-security Federal correctional institution with an adjoining satellite work camp. The medium-security institution would house approximately 1,200 inmates.

The Process

In the process of evaluating the potential environmental impacts associated with Federal correctional

facility development and operation, many factors and features will be analyzed including, but not limited to: Topography, geology, soils, hydrology, biological resources, cultural resources, hazardous materials, aesthetics, fiscal considerations, population/employment/housing characteristics, community services and facilities, land uses, utility services, transportation systems, meteorological conditions, air quality, and noise.

Alternatives

In developing the DEIS, the No Action alternative, other actions considered and eliminated, and alternatives sites for the proposed medium-security Federal correctional institution will be examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A Public Scoping Meeting will be held at 7 p.m., Tuesday, May 11, 2004, at City Hall, 168 Main Street, Berlin, New Hampshire. The meeting location, date, and time will be well-publicized and have been arranged to allow for the public as well as interested agencies and organizations to attend and formally express their views on the scope and significant issues to be studied as part of the DEIS process. The Scoping Meeting is being held to provide for timely public comments and understanding of Federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended, and the National Historic Preservation Act of 1966, as amended.

Availability of DEIS

Public notice will be given concerning the availability of the DEIS for public review and comment.

Contact

Questions concerning the proposed action and the DEIS may be directed to: Issac J. Gaston, Site Selection Specialist, Site Selection and Environmental Review Branch, U.S. Department of Justice—Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534 Telephone: 202–514–6470/ Facsimile: 202–616–6024/ *siteselection@bop.gov*.

Dated: April 2, 2004.

Pamela J. Chandler,

Acting Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons.

[FR Doc. 04–7914 Filed 4–6–04; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Survey of Occupational Injuries and Illnesses.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before June 7, 2004.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

Section 24(a) of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. The Commissioner of Labor Statistics has been delegated the responsibility for ''Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and publication of occupational safety and health statistics.'' The BLS fulfills this responsibility, in part, by conducting the Survey of Occupational Injuries and Illnesses in conjunction with participating State statistical agencies. The BLS Survey of Occupational Injuries and Illnesses provides the nation's primary indicator of the progress towards achieving the goal of safer and healthier workplaces. The survey produces the overall rate of occurrence of work injuries and illnesses by industry which can be compared to prior years to produce measures of the rate of change. These data are used to improve safety and health programs and measure the change in work-related injuries and illnesses.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the Survey of Occupational Injuries and Illnesses. Revisions have been made to the 2004 survey to reflect the current Occupational Safety and Health Administration (OSHA) recordkeeping regulations. The survey measures the overall rate of occurrence of work injuries and illnesses by industry. For the more serious injuries and illnesses, those with days away from work, the survey provides detailed information on the injured/ill worker (age, sex, race, industry, occupation, and length of service), the time in shift, and the circumstances of the injuries and illnesses classified by standardized codes (nature of the injury/illness, part of body affected, primary and secondary

sources of the injury/illness, and the event or exposure which produced the injury/illness).

Survey data are used to assess the Nation's progress in improving the safety and health of America's work places; to prioritize scarce Federal and State resources; to guide the development of injury and illness prevention strategies; and to support OSHA and State safety and health standards and research. Data are essential for evaluating the effectiveness of Federal and State programs for improving work place safety and health. For these reasons, it is necessary to provide estimates separately for participating States.

Type of Review: Revision of currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
BLS 9300	230,000	Annually	230,000	.4 hour	91,666 hours.
Prenotification Package	175,000 out of 230,000	Annually	175,000 out of 230,000	1.35 hours	236,000 hours.
Totals	230,000		230,000		327,666 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 26th day of March, 2004.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 04–7851 Filed 4–6–04; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–336 And 50–423]

Dominion Nuclear Connecticut, Inc., Millstone Power Station, Units 2 and 3; Notice of Intent To Prepare An Environmental Impact Statement and Conduct Scoping Process

Dominion Nuclear Connecticut, Inc. (DNC) has submitted applications for renewal of Facility Operating Licenses, DPR–65 and NPF–49 for an additional 20 years of operation at the Millstone Power Station, Units 2 and 3 (MPS). MPS is located on the north shore of Long Island Sound in Waterford, Connecticut, approximately 40 miles southeast of Hartford, Connecticut. The operating licenses for MPS, Units 2 and 3, expire on July 31, 2015, and November 25, 2025, respectively. The applications for renewal were received on January 22, 2004, pursuant to 10 CFR Part 54. A notice of receipt and availability of the applications, which included the environmental report (ER), was published in the **Federal Register** on February 3, 2004, (69 FR 5197). A notice of acceptance for docketing of the applications for renewal of the facility operating license was published in the **Federal Register** on March 12, 2004, (69 FR 11897). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal applications and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, DNC submitted the ER as part of the applications. The ER was prepared pursuant to 10 CFR Part 51 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Electronic Reading Room link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The applications may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/millstone.html*. In addition, the Waterford Public Library, located at 49 Rope Ferry Road, Waterford, Connecticut 06385, and the Thames River Campus Library at Three Rivers Community College, 574 New London Turnpike, Norwich, Connecticut 06360, have agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants,'' (NUREG–1437) in support of the review of the applications for renewal of the MPS operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act of 1969 (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Dominion Nuclear Connecticut, Inc.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the MPS license renewal supplement to the GEIS. The scoping meetings will be held at the Waterford Town Hall Auditorium, 15 Rope Ferry Road in Waterford, Connecticut, on Tuesday, May 18, 2004. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Waterford Town Hall Auditorium. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Richard L. Emch, Jr., by telephone at 1–800–368–5642, extension 1590, or by Internet to the NRC at *MillstoneEIS@nrc.gov* no later than May 14, 2004. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Emch will need to be contacted no later than May 10, 2004, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the MPS license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by June 4, 2004. Electronic comments may be sent by the Internet to the NRC at *MillstoneEIS@nrc.gov* and should be sent no later than June 4, 2004, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://www.nrc.gov/reading-rm/adams.html.*

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal applications was the subject of the aforementioned **Federal Register** notice (69 FR 11897). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://www.nrc.gov/reading-rm/adams.html*. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Emch at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 31st day of March 2004.

For The Nuclear Regulatory Commission.

K. Steven West,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E4–766 Filed 4–6–04; 8:45 a.m.]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 155, OMB Control No. 3235–0549, SEC File No. 270–492;
Rule 477, OMB Control No. 3235–0550, SEC File No. 270–493

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comment on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 155 (OMB Control No. 3235–0549; SEC File No. 270–492) under the Securities Act of 1933 provides safe harbors for a registered offering following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offering in either case. Rule 155 requires any prospectus filed as a part of a registration statement after a private offering to include disclosure regarding abandonment of the private offering. Similarly, the rule requires an issuer to provide each offeree in a private offering following an abandoned registered offering with: (1) Information concerning withdrawal of the registration statement; (2) the fact that the private offering is unregistered; and (3) the legal implications of the offering's unregistered status. The likely respondents will be companies. We estimate that 600 issuers will file Rule 155 submissions annually at an estimated 4 hours per response. We also estimate that 50% of the 2,400 total annual burden hours (1,200 burden hours) would be prepared by the issuer. We estimate that the remaining 50% of the burden hours is prepared by outside counsel.

Securities Act Rule 477 (OMB 3235–0550; SEC File No. 270–493) sets forth procedures for withdrawing a registration statement or any amendment or exhibits thereto. The rule provides that if a registrant applies for withdrawal in anticipation of reliance on Rule 155's registered-to-private safe harbor, the registrant must state in the withdrawal application that the registrant plans to undertake a subsequent private offering in reliance on the rule. Without this statement, the Commission would not be able to monitor issuers' reliance on, and compliance with, Rule 155(c). The likely respondents will be companies. We estimate that 300 issuers will file Rule 477 submissions annually at an estimated one-hour per response for a total annual burden of 300 hours. We estimate that 100% of the reporting burden is prepared by the issuer.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: March 31, 2004.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–7823 Filed 4–6–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49509; File No. SR–ISE–2004–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Extension and Expansion of the Pilot Program for Quotation Spreads

March 31, 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 March 30, 2004, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The proposed rule change has been filed by the ISE under Rule 19b-4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On March 19, 2003, the Commission approved an ISE proposal to establish a pilot program permitting the allowable quotation spread for options on up to 50 equity securities to be $5, regardless of the price of the bid (''Pilot Program'').[4] The ISE proposes to extend the Pilot Program until June 29, 2004, and to expand the Pilot Program to include all equity options trading on the ISE. Pursuant to Rule 19b–4(f)(6) under the Act, the ISE requests that the Commission waive the 30-day pre-operative requirement contained in Rule 19b–4(f)(6)(iii).[5]

The text of the proposed rule change appears below. Additions are *italicized*; deletions are bracketed.

Rule 803. Obligations of Market Makers

* * * * *

Supplementary Material to Rule 803

.01 Pursuant to paragraph (b)(4) of Rule 803, during a [six-month] pilot period expiring on [March 31] *June 29*, 2004, [the Exchange may designate options on up to fifty (50) underlying securities that] *all options classes* may be quoted with a difference not to exceed $5 between the bid and offer regardless of the price of the bid.

* * * * *

(a) Inapplicable.
(b) Inapplicable.

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 ISE 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 ISE has prepared

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 47532, 68 FR 14728 (March 26, 2003) (order approving File No. SR–ISE–2001–15) (''Pilot Program Approval Order'').

[5] 17 CFR 240.19b–4(f)(6)(iii).

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 ISE's rules contain maximum quotation spread requirements that vary from $.25 to $1.00, depending on the price of the option. On March 19, 2003, the Commission approved a proposal to amend Supplementary Material .01 to ISE Rule 803, "Obligations of Market Makers,'' to establish a six-month Pilot Program in which the allowable quotation spread for options on up to 50 underlying equity securities would be $5, regardless of the price of the bid.[6] The Pilot Program has been extended twice.[7] As required by the Pilot Program Approval Order, the ISE has submitted to the Commission a report detailing the ISE's experience with the Pilot Program.

The ISE believes that the Pilot Program has been successful, and the ISE has filed a proposal with the Commission to make the Pilot Program permanent and to apply it to all ISE listed equity options.[8] The purpose of the current proposal is to expand the Pilot Program to cover all equity options trading on the ISE and to extend the Pilot Program until June 29, 2004, while the Commission considers the ISE's proposal to make the Pilot Program permanent. During the extension, the ISE will provide the Commission with an updated Pilot Program report that covers all of the equity options classes in the expanded Pilot Program. The ISE will provide the updated report to the Commission by June 15, 2004.

2. Statutory Basis

According to the ISE, the statutory basis for the proposal is the requirement under section 6(b)(5) of the Act[9] that a national securities exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on the proposed rule change. The ISE has not received any unsolicited written comments from members or other interested persons.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The ISE has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), the ISE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative delay to prevent a lapse in the operation of the Pilot Program.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the Pilot Program to continue without interruption through June 29, 2004, and will expand the Pilot Program to include all equity options trading on the ISE, thereby helping the ISE to assess the effects of the $5 spreads permitted under the Pilot Program.[12] For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it 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–ISE–2004–10. The 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 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 ISE. All submissions should refer to File No. SR–ISE–2004–10 and should be submitted by April 28, 2004.

[6] *See* Pilot Program Approval Order, *supra* note 4.

[7] *See* Securities Exchange Act Release Nos. 48514 (September 22, 2003), 68 FR 55685 (September 26, 2003) (notice of filing and immediate effectiveness of File No. SR–ISE–2003–21) (extending the Pilot Program through January 31, 2004); and 49149 (January 29, 2004), 69 FR 05627 (notice of filing and immediate effectiveness of File No. SR–ISE–2004–02) (extending the Pilot Program through March 31, 2004).

[8] *See* File No. SR–ISE–2003–22.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–7824 Filed 4–6–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49514; File No. SR–Phlx–2004–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to the Rescission of Exchange Rule 713

April 1, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 9, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 the Phlx. On March 29, 2004, the Phlx amended the proposal.[3] The Exchange filed the proposed rule change under Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission. 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 Phlx proposes to rescind Exchange Rule 713, Statements Available to Customers. Proposed deleted text is in brackets.

[Statements Available to Customers]

[Rule 713. Each member organization shall make available to any customer of such organization at his request a statement of its financial condition as of the date of its most recent answer to the financial questionnaire of the Exchange or as of a date subsequent thereto. The financial statement shall fairly present the financial condition of such organization.

As used herein, the term ''customer'' means any person who, in accordance with the ordinary usage of the trade, would be considered a customer at the time of the request.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to rescind Exchange Rule 713, because it is obsolete.

Currently, Rule 713 provides that each member organization shall make available to any customer of such organization at his request a statement of its financial condition as of the date of its most recent answer to the financial questionnaire of the Exchange or as of a date subsequent thereto. The Exchange no longer utilizes the financial questionnaire referred to in Rule 713. Those member organizations that are required to provide annual audited financial statements currently do so pursuant to Rule 17a–5(c)[6] under the Act, rather than Rule 713.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general it is intended to protect investors and the public interest by eliminating obsolete and outdated rules applicable to exchange member firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act [9] and Rule 19b–4(f)(6) thereunder [10] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Phlx has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* March 26, 2004 letter from Mark I. Salvacion, Director and Counsel, Phlx, to Rose Wells, Division of Market Regulation, Commission and attachments (''Amendment No. 1''). Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). The Phlx provided the Commission with written notice of its intention to file the proposed rule change on January 28, 2004. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on March 29, 2004, the date of filing of Amendment No. 1.

[6] Amendment No. 1 contained a typographical error: Rule 17a–5(d) was referenced instead of Rule 17a–5(c). As a result of a telephone conversation between Commission staff and Mark I. Salvacion on April 1, 2004, Commission staff corrected the error without requiring that an amendment be filed.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] As required under Rule 19b–4(f)(6)(iii), the Phlx provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, on January 28, 2004.

[12] 15 U.S.C. 78s(b)(3)(C).

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–Phlx–2004–03. 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 Phlx. All submissions should refer to File No. SR–Phlx–2004–03 and should be submitted by April 28, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7856 Filed 4–6–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before May 7, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David__Rostker@omb.eop.gov,* fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Disaster Business Loan Application.

No's: 5, 1368.

Frequency: On occasion.

Description of Respondents: Disaster Business loan applicants.

Responses: 12,742.

Annual Burden: 29,754.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E4–768 Filed 4–6–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region II Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting at 10 a.m. eastern time on Wednesday, April 21, 2004 at Speed Transportation, 2299 Kenmore Avenue, Buffalo, New York to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present. Anyone wishing to make an oral presentation to the Board must contact Franklin J. Sciortino, District Director, in writing by letter or fax no later than April 15, 2004, in order to be put on the agenda. Franklin J. Sciortino, District Director, U.S. Small Business Administration, 1311 Federal Building, 111 West Huron Street, Buffalo, NY 14202. Telephone (716) 551–4301 or Fax (716) 551–4418.

Matthew G. Becker,

Committee Management Officer.

[FR Doc. E4–767 Filed 4–6–04; 8:45 a.m.]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4682]

Culturally Significant Objects Imported for Exhibition Determinations: ''Inverted Utopias: Avant-Garde Art in Latin America''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Inverted Utopias: Avant-Garde Art in Latin America'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Houston from on or about June 20, 2004 to on or about September 12, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects covered by this Notice, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–5078). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 30, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–7872 Filed 4–6–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4681]

Culturally Significant Objects Imported for Exhibition Determinations: ''Ruhlmann: Genius of Art Deco''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C.

[13] 17 CFR 200.30–3(a)(12).

2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Ruhlmann: Genius of Art Deco,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about June 7, 2004 to on or about September 5, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 1, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–7871 Filed 4–6–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4680]

Bureau of Nonproliferation; Imposition of Nonproliferation Measures Against Thirteen Entities, Including Ban on U.S. Government Procurement

SUMMARY: A determination has been made that thirteen entities have engaged in activities that require the imposition of measures pursuant to Section 3 of the Iran Nonproliferation Act of 2000, which provides for penalties on entities for the transfer to Iran of equipment and technology controlled under multilateral export control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes (a) items of the same kind as those on multilateral lists, but falling below the control list parameters, when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, and (b) other items with the potential of making such a material contribution, when added through case-by-case decisions.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, (202–647–1142). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to sections 2 and 3 of the Iran Nonproliferation Act of 2000 (Pub. L. 106–178), the U.S. Government determined on March 19, 2004, that the measures authorized in section 3 of the Act shall apply to the following foreign entities identified in the report submitted pursuant to section 2(a) of the Act:

Baranov Engine Building Association Overhaul Facility (Russia) and any successor, sub-unit, or subsidiary thereof;

Beijing Institute of Opto-Electronic Technology (BIOET) (China) and any successor, sub-unit, or subsidiary thereof;

Belarus Belvneshpromservice (Belarus) and any successor, sub-unit, or subsidiary thereof;

Blagoja Samakoski (Macedonia);

Changgwang Sinyong Corporation (North Korea) and any successor, sub-unit, or subsidiary thereof;

China North Industries Corporation (NORINCO) (China) and any successor, sub-unit, or subsidiary thereof;

China Precision Machinery Import/Export Corporation (CPMIEC) (China) and any successor, sub-unit, or subsidiary thereof;

Elmstone Service and Trading FZE (LLC) (United Arab Emirates) and any successor, sub-unit, or subsidiary thereof;

Goodly Industrial Company Ltd. (Taiwan) and any successor, sub-unit, or subsidiary thereof;

Mikrosam (Macedonia) and any successor, sub-unit, or subsidiary thereof;

Oriental Scientific Instruments Corporation (OSIC) (China) and any successor, sub-unit, or subsidiary thereof;

Vadim V. Vorobey (Russia);

Zibo Chemical Equipment Plant, aka Chemet Global Ltd., aka South Industries Science and Technology Trading Company, Ltd. (China) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to the provisions of the Act, the following measures are imposed on these entities:

1. No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods, technology, or services from these foreign persons;

2. No department or agency of the United States Government may provide any assistance to the foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government;

3. No United States Government sales to the foreign persons of any item on the United States Munitions List (as in effect on August 8, 1995) are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and,

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years from the effective date, except to the extent that the Secretary of State or Deputy Secretary of State may subsequently determine otherwise. A new determination will be made in the event that circumstances change in such a manner as to warrant a change in the duration of sanctions.

Dated: April 1, 2004.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–7870 Filed 4–6–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–24]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 2, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2004–16913.
Petitioner: Peninsula Airways d.b.a. PenAir.
Section of 14 CFR Affected: 14 CFR 121.354(b).
Description of Relief Sought/ Disposition: To permit Peninsula Airways d.b.a. PenAir, to operate its 4 Cessna 208 Caravans after March 29, 2005, without having an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order C151 installed on each aircraft, subject to certain conditions and limitations.

Grant, 3/23/04, Exemption No. 8279

Docket No.: FAA–2004–17200.
Petitioner: Mr. Keith Dale Cole.
Section of 14 CFR Affected: 14 CFR 91.109(a).
Description of Relief Sought/ Disposition: To permit Mr. Keith Dale Cole, to conduct certain flight training in certain Beechcraft Bonanza/Debonair airplanes that are equipped with a functioning throw-over control wheel.

Grant, 3/23/04, Exemption No. 8278

Docket No.: FAA–2001–10949.
Petitioner: FedEx Corporation d.b.a. FedEx Express.
Section of 14 CFR Affected: 14 CFR 121.613 and 121.625.
Description of Relief Sought/ Disposition: To permit FedEx Corporation d.b.a. FedEx Express, to dispatch aircraft under instrument flight rules when conditional language in a one-time increment of the weather forecast states that the weather at the destination airport, alternate airport, or both airports could be below the authorized weather minimums when other time increments of the weather forecast state that weather conditions will be at or above the authorized weather minimums.

Grant, 3/24/04, Exemption No. 8282

Docket No.: FAA–2004–17266.
Petitioner: Comair, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Comair, Inc., to substitute a qualified and authorized check airman or aircrew program designee for a Federal Aviation Administration inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.

Grant, 3/24/04, Exemption No. 8281

Docket No.: FAA–2004–17281.
Petitioner: Guidance Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Guidance Helicopters, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 3/26/04, Exemption No. 8284

Docket No.: FAA–2002–11557.
Petitioner: Bemidji Aviation Services, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Bemidji Aviation Services, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 3/26/04, Exemption No. 6110D

Docket No.: FAA–2004–17130.
Petitioner: Northwest Seaplanes, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Northwest Seaplanes, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 3/26/04, Exemption No. 8283

Docket No.: FAA–2004–17282.
Petitioner: Executive Air Express, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Executive Air Express, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 3/26/04, Exemption No. 8285

[FR Doc. 04–7878 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bob Hope Airport, Burbank, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bob Hope Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 7, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dan Feger, Deputy Executive Director at the following address: Burbank-Glendale-Pasadena Airport Authority, 2627 Hollywood Way, Burbank, CA 91505.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Burbank-Glendale-Pasadena Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ruben Cabalbag, Airports Program Engineer, Airports Division, Federal Aviation Administration, 15000 Aviation Blvd, Room 3012, Lawndale, CA 90261, telephone (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bob Hope Airport under the provisions of the 49 United States Code (U.S.C.) section 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 27, 2004, the FAA determined that the application to

impose and use the revenue from a PFC submitted by the Burbank-Glendale-Pasadena Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 28, 2004.

The following is a brief overview of the impose and use application No. 04–06–C–00–BUR:

Level of Proposed PFC: $4.50

Proposed Charge Effective Date: March 1, 2010.

Proposed Charge Expiration Date: July 1, 2010.

Total Estimated PFC Revenue: $4,500,000.

Brief description of the proposed projects: Aircraft rescue and firefighting (ARFF) vehicle replacement; engineered material arresting system (EMAS); Friction measuring device; runway protection zone land acquisition; Luther Burbank Middle School acoustical systems; noise map geographic information system (GIS) database; hangar 3 obstruction removal; rehabilitation of runway and service road; airfield lighting replacement; and terminal roadway paving.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Burbank-Glendale-Pasadena Airport Authority.

Issued in Lawndale, California, on March 23, 2004.

John P. Milligan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 04–7882 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Grand Canyon West Airport, Peach Springs, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Canyon West Airport under the provision of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 7, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rory Majenty, Project Manager, Hualapai Indian Tribe, at the following address: Grand Canyon West Airport, P.O. Box 359, Peach Springs, Arizona 86434. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hualapai Indian Tribe under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mickael Agaibi, Arizona Standards Section Supervisor, Airports Division, 15000 Aviation Boulevard, Room 3024, Lawndale, CA 90261, telephone: (310) 725–3611. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Canyon West Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158). On March 12, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Hualapai Indian Tribe was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 16, 2004.

The following is a brief overview of the impose and use application No. 04–01–C–00–1G4:

Level of Proposed PFC: $3.00.

Proposed Charge Effective Date: June 1, 2004.

Proposed Charge Expiration Date: June 1, 2006.

Total Estimated PFC Revenue: $308,210.

Brief description of the proposed projects: Design and construct parallel taxiway and associated connector taxiways; design and construct aircraft-parking apron; design and construct access road; design and reconstruct the primary runway; and design new terminal building including utilities.

Class or Classes of Air Carriers Which the Public Agency Has Requested Not Be Required To Collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hualapai Indian Tribe.

Issued in Lawndale, California, on March 12, 2004.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 04–7881 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17472]

Notice of Receipt of Petition for Decision That Nonconforming 1996 Honda CB750 (CB750F2T) Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996 Honda CB750 (CB750F2T) motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1996 Honda CB750 (CB750F2T) motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 7, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket

Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70, pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

SuperBike Racing, Inc. of Valdosta, Georgia ("SRI'') (Registered Importer 1–286) has petitioned NHTSA to decide whether non-U.S. certified 1996 Honda CB750 (CB750F2T) motorcycles are eligible for importation into the United States. The vehicles that SRI believes are substantially similar are 1996 Honda CB750 (Nighthawk) motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1996 Honda CB750 (CB750F2T) motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

SRI submitted information with its petition intended to demonstrate that non-U.S. certified 1996 Honda CB750 (CB750F2T) motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1996 Honda CB750 (CB750F2T) motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies, which incorporate headlamps that are certified to DOT requirements; (b) replacement of all stop lamp and directional bulbs with ones that are certified to DOT requirements; (c) replacement of all lenses and housings (if needed) with ones that are certified to DOT requirements.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer reading in miles per hour and a U.S.-model odometer reading in miles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 2, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–7883 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17473]

Notice of Receipt of Petition for Decision That Nonconforming 2002–2004 Porsche 911(996) Carrera Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002–2004 Porsche 911(996) Carrera passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002–2004 Porsche 911 (996) Carrera passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 7, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70, pages 19477–78), or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US SPECS (Registered Importer 03–321) of Aberdeen, Maryland has petitioned NHTSA to decide whether 2002–2004 Porsche 911 (996) Carrera passenger cars are eligible for importation into the United States. The vehicles that U.S. SPECS believes are substantially similar are 2002–2004 Porsche 911 (996) Carrera passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it compared non-U.S. certified 2002–2004 Porsche 911 (996) Carrera passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

US SPECS submitted information with its petition intended to demonstrate that non-U.S. certified 2002–2004 Porsche 911 (996) Carrera passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002–2004 Porsche 911 (996) Carrera passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 302 *Flammability of Interior Materials*, and 401 *Interior Trunk Release*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: Modification of the speedometer so that it is calibrated in miles per hour (MPH).

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: Installation of the following components on vehicles that are not already so equipped: (a) U.S.-model headlamps and front sidemarker lights; (b) U.S.-model taillamp assemblies, which incorporate rear sidemarker lights; (c) U.S.-model high-mounted stop light assembly; (d) compliant front and rear side reflex reflectors.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Inscription of the required warning statement on the passenger side rearview mirror, or replacement of that mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: Installation of a key warning buzzer if the vehicles are not already so equipped.

Standard No. 118 *Power-Operated Window Partition, and Roof Panel Systems*: Programming of the vehicles or rewiring them, as required, to ensure compliance with the standard.

Standard No. 201 *Occupant Protection In Interior Impact*: Inspection of all vehicles and installation of U.S.-model components, as necessary, to ensure compliance with the standard. The petitioner expressed the belief that the vehicles do in fact comply with the standard.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of an audible warning buzzer which is wired to the seat belt latches to ensure that the seat belt warning system activates in the proper manner; (b) inspection of all vehicles and installation of U.S.-model components, as necessary, to ensure compliance with the standard. The petitioner states that the vehicles are equipped with a seat belt warning lamp that is identical to the component used on the vehicles' U.S.-certified counterparts. The petitioner further states that the vehicles are equipped with dual front air bags and knee bolsters, and with combination lap and shoulder belts at the front and rear outboard seating positions that are self-tensioning and released by means of a single red push button.

Standard No. 209 *Seat Belt Assemblies*: inspection of all vehicles and installation of U.S.-model passenger side components, if not already so equipped, to ensure compliance with the standard. The petitioner expressed the belief that the vehicles do in fact comply with the standard.

Standard No. 225 *Child Restraint Anchorage Systems*: inspection of all vehicles and installation of U.S.-model components, as necessary, to ensure compliance with the standard.

301 *Fuel System Integrity*: Inspection of all vehicles and installation of U.S.-model components on vehicles that are not already so equipped, to ensure compliance with the standard.

Petitioner states that all vehicles must be inspected to ensure compliance with the Bumper Standard found at 49 CFR part 581 and that U.S.-model components will be installed, as necessary on vehicles that are not already so equipped. The petitioner expressed the belief that the vehicles do in fact comply with this standard.

The petitioner states that the vehicles are exempt from the Theft Prevention Standard at 49 CFR part 541 because they are equipped with antitheft devices.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 2, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–7884 Filed 4–6–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34480]

Chestnut Ridge Railroad Corporation—Acquisition and Operation Exemption—Chestnut Ridge Railway Company

Chestnut Ridge Railroad Corporation (CHR), a noncarrier subsidiary of Horsehead Corp. (Horsehead), has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 6.6 miles of rail line formerly operated by Chestnut Ridge Railway Company (Chestnut), extending from a connection with the Norfolk Southern Railway Company at Chestnut's milepost 0.0 in Palmerton, PA, to milepost 6.6 in Carbon County, PA.[1]

CHR certifies that its annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier and that its revenues will not exceed $5 million.

The parties indicate that they intend to consummate the transaction as promptly as possible after March 15, 2004, the effective date of the exemption (7 days after the exemption was filed).

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. 34480, 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 Donald G. Avery, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 23, 2004.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–7072 Filed 4–6–04; 8:45 am]

BILLING CODE 4915–01–P

[1] In a decision served on March 12, 2004, in STB Finance Docket No. 34481, *Horsehead Corp.—Petition for Acquisition and Operation Exemption—Chestnut Ridge Railway Company,* the Board granted Horsehead's request for an exemption authorizing its acquisition and operation of the subject rail line and made the exemption retroactive back to December 23, 2003, when Horsehead acquired the line through a bankruptcy auction.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34484]

James Riffin d/b/a the Northern Central Railroad—Acquisition and Operation Exemption—in York County, PA and Baltimore County, MD

James Riffin d/b/a the Northern Central Railroad (NCR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately: (a) 20.9 miles of rail line from the Commissioners of York County, PA (Conrail's former Line Code 1224) between milepost 35.1 (at the Maryland/Pennsylvania line), and milepost 56 (Grantly), in York County, PA; (b) 2.0 miles of abandoned rail line (Conrail's former Line Code 1224) between milepost 14.2 (Cockeysville) and milepost 16.2 (Asland), in Baltimore County, MD; and (c) 0.9 miles of abandoned rail line (Conrail's former line Code 1224) between milepost 24.3 (Blue Mount) and milepost 25.2 (Blue Mount Quarry), in Baltimore County, MD.[1] NCR proposes to interchange with the Genesee and Wyoming Railroad.

NCR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and states that such revenues will not exceed $5 million annually. NCR intends to commence these activities within 90 days from the date the notice of exemption was filed (March 8, 2004).

If the verified 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. 34484, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James Riffin, 1941 Greenspring Drive, Timonium, MD 21093.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 25, 2004.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–7326 Filed 4–6–04; 8:45 am]

BILLING CODE 4915–01–P

[1] NCR has indicated that the portions of the abandoned right-of-way it proposes to acquire and operate in (b) and (c) above have reverted back to the original owners. Therefore, NCR does not need Board authority to acquire those portions of the right-of-way; however, it does need Board authority to operate those portions of the line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34476]

Progressive Rail, Incorporated—Acquisition and Operation Exemption—Rail Lines of Union Pacific Railroad Company

Progressive Rail, Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease from Union Pacific Railroad Company (UP) and operate approximately 17.0 miles of rail line in Dakota and Scott Counties, MN. The lines consist of the Canon Falls Branch between milepost 58.1 at or near Northfield, MN, and milepost 73.7 at or near Canon Falls, MN (15.6 miles), and the Faribault Industrial Lead between milepost 44.4 and milepost 45.8 at or near Faribault, MN (1.4 miles). The transaction also includes incidental trackage rights assigned by UP to PGR over the Canadian Pacific Railway Company between Northfield and Comus, MN, and over the Iowa, Chicago and Eastern Railroad Corp. between Comus and Faribault.

PGR certifies that its projected annual revenues as a result of this transaction do not exceed those that would qualify it as a Class III rail carrier, and that such revenues will not exceed $5 million annually.

The transaction was scheduled to be consummated on or about March 15, 2004.

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. 34476, 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 Thomas F. McFarland, 208 LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 23, 2004.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–7071 Filed 4–6–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 31, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 7, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0735.

Regulation Project Number: LR–189–80 (TD 7927) Final.

Type of Review: Extension.

Title: Amortization of Reforestation Expenditures.

Description: Section 194 allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the Service to determine if the election is proper and allowable.

Respondents: Individuals or households, Business or other for-profit, Farms.

Estimated Number of Respondents: 12,000.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of response: Annually.

Estimated Total Reporting Burden: 6,001 hours.

OMB Number: 1545–1226.

Regulation Project Number: FI–59–89 Final.

Type of Review: Extension.

Title: Proceeds of Bonds used for Reimbursement.

Description: The rules require record maintenance by a state or local government or section 501(c)(3) organization issuing tax-exempt bonds (''Issuer'') to reimburse itself for previously-paid expenses. This recordkeeping will establish that the issuer had an intent, when it paid an expense, to later issue a reimbursement bond.

Respondents: State, Local or Tribal Government, Business or other for-profit.

Estimated Number of Recordkeepers: 2,500.

Estimated Burden Hours Recordkeeper: 2 hours, 24 minutes.

Estimated Total Recordkeeping Burden: 6,000 hours.

OMB Number: 1545–1300.

Regulation Project Number: FI–46–89 Final.

Type of Review: Extension.

Title: Treatment of Acquisition of Certain Financial Institutions: Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

Description: Recipients of Federal financial assistance (FFA) must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.

Respondents: Business or other for-profit, Federal Government.

Estimated Number of Respondents/Recordkeepers: 500.

Estimated Burden Hours Respondent/Recordkeeper: 4 hours, 24 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,200 hours.

OMB Number: 1545–1564.

Regulation Project Number: REG–103330–97 Final.

Type of Review: Extension.

Title: IRS Adoption Taxpayer Identification Numbers.

Description: The regulation authorized the IRS to assign a new form of taxpayer identification number, the IRS Adoption Taxpayer Identification Number (ATIN), to children who are being adopted. The regulation is issued under section 6109 and is effective for tax returns due on or after April 15, 1998.

Respondents: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–7848 Filed 4–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 31, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW, Washington, DC 20220.

Dates: Written comments should be received on or before May 7, 2004, to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0005.

Form Number: TTB F 5130.10.

Recordkeeping Requirement ID Numbers: TTB REC 5130/2.

Type of Review: Extension.

Title: Letterhead Applications and Notices Filed by Brewers.

Description: The Internal Revenue Code requires brewers to file a notice of intent to operate a brewery. TTB Form 5130.10 is similar to a permit and, when approved by TTB, is a brewer's authorization to operate. Letterhead applications and notices are necessary to identify brewery activities so that TTB may insure that proposed operations do not jeopardize Federal revenues.

Respondents: Business of other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,750.

Estimated Burden Hours Per Respondent/Recordkeeper:

TTB F 5310.10: 3 hours,

Notices and Applications: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 9,625 hours.

OMB Number: 1513–0085.

Recordkeeping Requirement ID Numbers: TTB REC 5130/5.

Type of Review: Extension.

Title: Principal Place of Business on Beer Labels.

Description: TTB regulations permit domestic brewers who operate more than one brewery to show as their address on labels and kegs of beer, their "principal place of business'' address. This label option may be used in lieu of showing the actual place of production on the label or of listing all of the brewer's locations on the label.

Respondents: Business of other for-profit.

Estimated Number of Recordkeepers: 1,200.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: William H. Foster, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005, (202) 927–8210.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–7849 Filed 4–6–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8857

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8857, Request for Innocent Spouse Relief.

DATES: Written comments should be received on or before June 7, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Innocent Spouse Relief.

OMB Number: 1545–1596.

Form Number: 8857.

Abstract: Section 6013(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, "innocent spouse'' relief when: the taxpayer files a joint return with tax substantially understated; the taxpayer establishes no knowledge of, or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable. Form 8857 is used to request relief from liability of an understatement of tax on a joint return resulting from a grossly erroneous item attributable to the spouse.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 21,336.

Estimated Time Per Respondent: 1 hour, 8 minutes.

Estimated Total Annual Burden Hours: 24,324.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7896 Filed 4–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–115393–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–115393–98 (TD 8816), Roth IRAs (§§ 1.408A–2, 1.408A–4, 1.408A–5 and 1.408A–7).

DATES: Written comments should be received on or before June 7, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Roth IRAs.

OMB Number: 1545–1616.

Regulation Project Numbers: REG–115393–98.

Abstract: The regulations provide guidance on establishing Roth IRAs, contributions to Roth IRAs, converting amounts to Roth IRAs, recharacterizing IRA contributions, Roth IRA distributions and Roth IRA reporting requirements.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit and not-for-profit organizations.

Estimated Number of Respondents: 3,150,000.

Estimated Time Per Respondent: 1 minute for designating adn IRA as a Roth IRA. 30 minutes for recharacterizing an IRA contribution.

Estimated Total Annual Burden Hours: 125,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 1, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7897 Filed 4–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–96–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–96–88 (TD 8435), Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations (§ 301.9100–8).

DATES: Written comments should be received on or before June 7, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations.

OMB Number: 1545–1112.

Regulation Project Number: IA–96–88.

Abstract: Regulation section 301.9100–8 provides final income, estate and gift, and employment tax regulations relating to elections made under the Technical and Miscellaneous Revenue Act of 1988. This regulation enables taxpayers to take advantage of various benefits provided by the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 24,305.

Estimated Time Per Respondent: 17 minutes.

Estimated Total Annual Burden Hours: 6,712.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 1, 2004.

Glenn P, Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7898 Filed 4–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 2003

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 2003 as required by section 29 of the Internal Revenue Code (26 U.S.C. section 29). The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the tax credit allowable on the sale of fuel from nonconventional sources under section 29 during calendar year 2003.

DATES: The 2003 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 2003.

SUPPLEMENTARY INFORMATION:

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2003 is 2.1336.

Credit: The nonconventional source fuel credit for calendar year 2003 is $6.40 per barrel-of-oil equivalent of qualified fuels.

Reference Price: The reference price for calendar year 2003 is $27.56. Because this reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) does not occur for any qualified fuels sold during calendar year 2003.

FOR FURTHER INFORMATION CONTACT: For questions about how the inflation adjustment factor is calculated—Wu-Lang Lee, RAS:R:TSBR, Internal Revenue Service 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 874–0531 (not a toll-free number).

For all other questions about the credit or the reference price— Jaime Park, CC:PSI:7, Internal Revenue Service 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–3120 (not a toll-free number).

Dated: March 31, 2004.

Heather C. Maloy,

Associate Chief Counsel (Passthroughs and Special Industries).

[FR Doc. 04–7899 Filed 4–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 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, May 4, 2004, from 3 p.m. EDT to 4:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

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 2 Taxpayer Advocacy Panel will be held Tuesday, May 4, 2004 from 3 p.m. EDT to 4:30 p.m. EDT 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 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: March 31, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–7900 Filed 4–6–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Treasury Direct Forms.

DATES: Written comments should be received on or before June 7, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Treasury Direct Forms.

OMB Number: 1535–0069.

Form Number: PD F 5178, 5179, 5179–1, 5180, 5181, 5182, 5188, 5189, 5191, 5201, 5235, 5236, 5261, and 5381.

Abstract: The information is requested to issue and maintain treasury Bills, Notes, and Bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 431,632.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 58,628.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 1, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–7846 Filed 4–6–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Customer Satisfaction Survey.

DATES: Written comments should be received on or before June 7, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Satisfaction Survey to Implement Executive Order 12862.

OMB Number: 1535–0122.

Abstract: The information from the survey will be used to improve customer service.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 7,000.

Estimated Total Annual Burden Hours: 876.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 1, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–7847 Filed 4–6–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension, parents' dependency and indemnity compensation (DIC), spina bifida, and birth defects programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 2003. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 2004, which began on October 1, 2003.

DATES: These COLAs are effective December 1, 2003. The headstone or marker allowance rate is effective October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (212B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Pub. L. 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O. G. C. Prec. 17–90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 2003 under the above computation method was $112. Therefore, effective October 1, 2003, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 2004 is $112.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.1 percent cost-of-living increase in Social Security benefits effective December 1, 2003. Therefore, applying the same percentage and rounding up in accordance with 38 CFR 3.29, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 2003:

TABLE 1.—IMPROVED PENSION

Maximum annual rates
(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
Veteran with no dependents, $9,894
Veteran with one dependent, $12,959
For each additional dependent, $1,688
(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
Veteran with no dependents, $16,509
Veteran with one dependent, $19,570
For each additional dependent, $1,688
(3) Veterans who are housebound (38 U.S.C. 1521):
Veteran with no dependents, $12,092
Veteran with one dependent, $15,156
For each additional dependent, $1,688
(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
Neither veteran in need of aid and attendance or housebound, $12,959
Either veteran in need of aid and attendance, $19,570
Both veterans in need of aid and attendance, $25,498
Either veteran housebound, $15,156
Both veterans housebound, $17,355
One veteran housebound and one veteran in need of aid and attendance, $21,765
For each dependent child, $1,688
(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $6,634
Surviving spouse and one child in his or her custody, $8,686
For each additional child in his or her custody, $1,688
(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $10,606
Surviving spouse with one child in custody, $12,654
Surviving Spouse of Spanish-American War veteran alone, $11,291
Surviving Spouse of Spanish-American War veteran with one child in custody, $13,338
For each additional child in his or her custody, $1,688
(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $8,109
Surviving spouse and one child in his or her custody, $10,157
For each additional child in his or her custody, $1,688
(8) Surviving child alone (38 U.S.C. 1542), $1,688

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $2,244. (38 U.S.C. 1521(g))

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

TABLE 2

For each $1 of annual income		
The $474 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.08	800	11,256

No DIC is payable under this table if annual income exceeds $11,256.

One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $474 reduced on the basis of the parent's annual income according to the following formula:

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being

paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $342 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income		
The $342 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.06	800	900
.07	900	1,100
.08	1,100	11,256

No DIC is payable under this table if annual income exceeds $11,256.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $321 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $321 monthly rate shall be reduced by	Which is more than	But not more than
$.00	$0	$1,000
.03	1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	15,129

No DIC is payable under this table if combined annual income exceeds $15,129.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $256 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents, $11,256 (Pub. L. 95–588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance, $11,756 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $15,129 (Pub. L. 95–588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $15,629 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran or surviving spouse), $9,201 (Pub. L. 95–588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $3,591 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $9,853 (Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $14,205 (Pub. L. 95–588, section 306(b)).

Spina Bifida Benefits

Section 421 of Pub. L. 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are natural children of veterans who served in the Republic of Vietnam during the Vietnam era. Pursuant to 38 U.S.C. 1805(b)(3), spina bifida rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*). Effective December 1, 2003, spina bifida monthly rates are as follows:

Level I: $237
Level II: $821
Level III: $1,402

Birth Defects Benefits

Section 401 of Pub. L. 106–419 authorizes the payment of monetary

benefits to, or on behalf of, children of female Vietnam veterans born with certain birth defects. Pursuant to 38 U.S.C. 1815(d), birth defects rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*). Effective December 1, 2003, birth defects monthly rates are as follows:

Level I: $108
Level II: $237
Level III: $821
Level IV: $1,402

Dated: March 26, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–7822 Filed 4–6–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, VA.

ACTION: Notice of Government-owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Office of Research and Development (12TT), 810 Vermont Avenue NW., Washington, DC 20420; fax: 202–254–0473; e-mail at *bob.potts@hq.med.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: International Patent Application No. PCT/US02/37988 ''Use of Gingko Biloba Extracts to Promote Neuroprotection and Reduce Weight Loss''.

Dated: March 30, 2004.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 04–7820 Filed 4–6–04; 8:45 am]

BILLING CODE 8320–01–P

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: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled ''Patient Medical Records-VA'' (24VA136) as set forth in the **Federal Register** 56 FR 6048. VA is amending the system by revising the System Number, the System Location, Categories of Records in the System, Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses, Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System, and System Manager(s) and Address. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than May 7, 2004. If no public comment is received, the amended system will become effective May 7, 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 May 7, 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 System number is changed from 24VA136 to 24VA19 to reflect the current organizational alignment.

The System Location is amended to reflect current organization structure with Veterans Integrated Service Network Offices having replaced Regional Director Offices. The System Location is also amended to reflect the transition from maintaining paper medical records to computerized medical records. This includes computerized medical record data stored in the VA Health Data Repository (HDR). The HDR is defined as a repository of clinical information normally residing on one or more independent platforms for use by clinicians and other personnel in support of longitudinal patient-centric care. Data will be organized in a format that supports the clinical decision-making process requisite to patient care, independent of the physical location of that patient information. The key objective of the HDR project is the ability to create a composite, portable, legal medical record that will enable providers to obtain integrated data views (computable views) and acquire the patient-specific clinical information needed to support treatment decisions. Initially, data from existing Veterans Health Information Systems and Technology Architecture (VistA) systems will be used to populate the HDR. Thus, current VistA files (and the service processes using the files) will continue to be used. As VistA files and processes are replaced by commercial off-the shelf (COTS) applications, data will be mapped from these new locations. The HDR functionality will include notifications, clinical reminders, decision support, and alerts. The HDR will be located at the VA National Data Centers. Addresses of VA facilities are removed from the System Location and can be found in Appendix 1 of the biennial publication of the VA Privacy Act Issuances.

Categories of Records in the System are amended to remove specific titles of VA databases, as these are included in the VA National Database system of records. As of August 1992, paper perpetual medical records, which included the applications(s) for medical benefits, hospital summary(ies), operation report(s), and tissue examinations(s) for all episodes of care, and if applicable, autopsy reports and certain Freedom of Information and Privacy Acts related records, are no

longer created or maintained at VHA facilities. VHA facilities retire the complete paper medical record to a Federal Records Center after three years of inactivity in accordance with Records Control Schedule (RCS) 10–1.

Authority for Maintenance of the System is amended to reflect current code section numbers after 38 U.S.C. was re-codified by Congress.

Purpose(s) are amended to reflect how health information will be shared with government and private sector health care organizations.

Generally, routine use disclosures are amended to reflect plain language. Further, routine uses are amended to provide consistency with the Department of Health and Human Services Health Insurance Portability and Accountability Act (HIPAA) standards for Privacy, including re-phrasing ''medical record data'' or ''medical care'' to individually-identifiable health care information.

Routine uses with minor edits for plain language will not be further enumerated. Former Routine uses 9, 21, 22, 25, 29 and 30 provided for disclosures relative to patient financial obligations, unpaid debts, and matching programs with other federal agencies to identify veterans who have indebtedness to the United States by virtue of participation in a VA benefits program are deleted. This information or routine disclosures from 24VA136 to discover indebtedness information are incorporated into the new VA System of Records, 114VA16, ''The Revenue Program—Billing and Collections Records—VA'' which has been created to cover these disclosures.

Routine use number 3 has been amended in its entirety. On its own initiative, VA may disclose information, except for the names and home addresses 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.

VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide information to state or local agencies charged with protecting the public's health as set forth in state law.

Routine use number 4 has been amended to delete the phrase ''the letting of a contract'' as it no longer applies to this routine use. Also, the phrase ''as required by law'' has been added to ''the hiring or retention of an employee and the issuance of a security clearance as required by law''

Former routine use number 5 is deleted from this system of records. Upon review, it has been determined that this routine use is no longer applicable to this system and, as such, is no longer required.

Former routine uses 23 and 24 are deleted as they were invalidated by two court cases, *Doe* v. *DiGenova,* § 779 F. 2d 74(D.C. Cir. 1985) and *Doe* v. *Stephens,* § 854 F.2d. 14517(D.C. Cir. 1988).

The remaining routine uses are re-numbered due to above deletions.

Routine use 13, formerly 15, is amended to reflect VA's cabinet status by substituting the current title, Under Secretary for Health for Chief Medical Director.

Routine use 19, formerly 26, is amended to delete the phrase ''in order for the agency to obtain information relevant to an agency decision concerning the hiring, retention or termination of an employee'' as it no longer pertains to the routine use.

Routine use 25, formerly 34, was not amended, however, clarification on the intent of the term ''refers'' is being provided. It was always the intent of VA for the term ''refers'' to mean when VA health care facilities send a patient to a Federal agency or non-VA health care provider for treatment regardless of whether or not VA is paying for the care.

Routine use disclosures are added, as described below, to enable efficient administration of health care operations and to assist in the planning and delivery of patient medical care.

- Routine use thirty-five (35) states that disclosure by a physician or professional counselor that a patient is infected with Hepatitis C may be made to the spouse, the person or subject with whom the patient has a meaningful relationship with, or to an individual whom the patient or subject has identified as being a sexual partner of the patient or subject.
- Routine use thirty-six (36) states that information may be disclosed to the Federal Labor Relations Authority (FLRA) (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections. The release of information to FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates.
- Routine use thirty-seven (37) states information may be disclosed to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.
- Routine use thirty-eight (38) states that information may be disclosed to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.
- Routine use thirty-nine (39) states that information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.
- Routine use forty (40) states that health care information may be disclosed to health and welfare agencies, housing resources or utility companies, possibly to be combined with disclosures to other agencies, in situations where VA needs to act quickly in order to provide basic and/or emergency needs on behalf of veterans and veterans' families where the family resides with the veteran or serves as a caregiver.

There are times when these referrals must be made quickly to obtain the resources necessary to maintain safe community living situations and obtain priority service for high-risk veterans. Health can be compromised when heat is turned off, telephone access denied, and food and clothing is not available. Flexibility is needed to contact a variety of agencies promptly to meet multiple

needs in a timely manner. Numerous calls are often necessary to find the mix of resources needed. VA must be prepared to disclose relevant health care information to shelters, not-for-profit or profit assisted living homes, sheltered or group homes, public housing or to residence management that may be ready to evict veterans, where VA needs to use some medical and identifying information in negotiations.

• Routine use forty-one (41) states that health care information may be disclosed to funeral directors or representatives of funeral homes in order to allow them to make necessary arrangements prior to and in anticipation of a veteran's impending death.

• Routine use forty-two (42) states that health care information may be disclosed to the Food and Drug Administration (FDA), or a person subject to the jurisdiction of the FDA with respect to an FDA-regulated products, for purposes of reporting adverse events, product defects or problems, or biological product deviations; tracking products; enabling product recalls, repairs, or replacement; and/or conducting post marketing surveillance.

• Routine use forty-three (43) states that disclosure of individually-identifiable health care information may be made to a non-VA health care provider, such as DoD and IHS, for the purpose of treating a veteran. To better facilitate medical care and treatment for veterans, VA must be prepared to share health information between VHA, the Department of Defense (DoD), Indian Health Services (IHS), and other government health care organizations.

• Routine use forty-four (44) states that disclosure of information may be made to telephone company operators acting in a capacity to facilitate phone calls to/for hearing impaired individuals, such as veterans, veteran's family members, non-VA providers, *etc.,* using Telephone Devices for the Hearing Impaired including Telecommunications Device for the Deaf (TDD) or Text Telephones (TTY).

This service may be required in order for VA to provide veteran and/or veteran's family with disabilities basic and/or emergency health care services.

• Routine use forty-five (45) states that in compliance with 38 U.S.C. 5313B(d), VA may disclose information to any Federal, state, local, tribal or foreign law enforcement agency in order to report a known fugitive felon.

VA must also be able to provide information to Federal, state or local agencies charged with protecting the public.

• Routine use forty-six (46) states that relevant health care information, excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia, and the names and home addresses of veterans and their dependents, may be disclosed by VA employees who are designated requesters (individuals who have completed a course offered or approved by an Organ Procurement Organization), or their designee for the purpose of determining suitability of a patient's organs or tissues for organ donation to an Organ Procurement Organization, a designated requester that is a non-VA employee, or their designees acting on behalf of local Organ Procurement Organizations. This will permit representatives from the Organ Procurement Organizations to perform the medical record reviews required in making these determinations.

• Routine use forty-six (46) states relevant heath care information may be disclosed to DoD, or its components, for individuals treated under 38 U.S.C. 8111A for the purposes deemed necessary by appropriate military command authorities to assure proper execution of the military mission.

VA is adding this routine use to provide disclosure authority in the course of treating individuals under 38 U.S.C. 8111A for the purposes discussed under 45 CFR 164.512(k)(1)(i).

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.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system are amended to include provisions for computerized patient health information storage, including the Health Data Repository.

The safeguards are amended to delete specific references to the names of information systems, databases and files within the information system, as these have been incorporated into the VA National Database system of records. The section addressing access to file information and how the information is controlled has been updated to include access by remote data users such as Veteran Outreach Centers, Veteran Service Officers (VSO) with power of attorney to assist with claim processing, Veterans Benefits Administration (VBA) Regional Office staff for benefit determination and processing purposes, Office of Inspector General (OIG) staff conducting official audits or investigations and other authorized individuals. A section on Health Data Repository safeguards has also been added.

The System Manager is amended to reflect the current organizational structure and includes the System Manager for the Health Data Repository.

The Report of Intent to Amend a System on Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of 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: March 12, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

24VA19

SYSTEM NAME:

Patient Medical Records–VA.

SYSTEM LOCATION:

Records are maintained at each VA health care facility (in most cases, back-up information is stored at off-site locations). Subsidiary record information is maintained at the various respective services within the health care facility (*e.g.*, Pharmacy, Fiscal, Dietetic, Clinical Laboratory, Radiology, Social Work, Psychology, *etc.*) and by individuals, organizations, and/or agencies with whom VA has a contract or agreement to perform such services, as VA may deem practicable.

Address locations for VA facilities are listed in Appendix 1 of the biennial publication of the VA Privacy Act Issuances. In addition, information from these records or copies of these records may be maintained at the Department of Veteran Affairs Central Office, 810 Vermont, NW., Washington, DC 20420, VA National Data Centers, in the VA Health Data Repository (HDR) [located at the VA National Data Centers], VA Chief Information Office (CIO) Field Offices, Veterans Integrated Service Networks, Regional and General Counsel Offices.

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 members of their immediate families.

2. Spouse, surviving spouse, and children of veterans who have applied for health care services under Title 38, United States Code, Chapter 17.

3. Beneficiaries of other Federal agencies.

4. Individuals examined or treated under contract or resource sharing agreements.

5. Individuals examined or treated for research or donor purposes.

6. Individuals who have applied for Title 38 benefits but who do not meet the requirements under Title 38 to receive such benefits.

7. Individuals who were provided medical care under emergency conditions for humanitarian reasons.

8. Pensioned members of allied forces provided health care services under Title 38, United States Code, Chapter I.

CATEGORIES OF RECORDS IN THE SYSTEM:

The patient medical record is a consolidated health record (CHR) which may include:

(i) An administrative (non-clinical information) record (*e.g.*, medical benefit application and eligibility information) including information obtained from Veterans Benefits Administration automated records such as the Veterans and Beneficiaries Identification and Records Locator Subsystem-VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records–VA (58VA21/22/28), and correspondence about the individual;

(ii) A medical record (a cumulative account of sociological, diagnostic, counseling, rehabilitation, drug and alcohol, dietetic, medical, surgical, dental, psychological, and/or psychiatric information compiled by VA professional staff and non-VA health care providers), and

(iii) Subsidiary record information (*e.g.*, tumor registry, dental, pharmacy, nuclear medicine, clinical laboratory, radiology, and patient scheduling information). The consolidated health record may include identifying information (*e.g.*, name, address, date of birth, VA claim number, social security number), military service information (*e.g.*, dates, branch and character of service, service number, medical information), family information (*e.g.*, next of kin and person to notify in an emergency; address information, name, social security number and date of birth for veteran's spouse and dependents; family medical history information), employment information (*e.g.*, occupation, employer name and address), financial information (*e.g.*, family income; assets; expenses; debts; amount and source of income for veteran, spouse and dependents), third-party health plan contract information (*e.g.*, health insurance carrier name and address, policy number, amounts billed and paid), and information pertaining to the individual's medical, surgical, psychiatric, dental, and/or psychological examination, evaluation, and/or treatment (*e.g.*, information related to the chief complaint and history of present illness; information related to physical, diagnostic, therapeutic, special examinations, clinical laboratory, pathology and x-ray findings, operations, medical history, medications prescribed and dispensed, treatment plan and progress, consultations; photographs taken for identification and medical treatment; education and research purposes; facility locations where treatment is provided; observations and clinical impressions of health care providers to include identity of providers and to include, as appropriate, the present state of the patient's health, an assessment of the patient's emotional, behavioral, and social status, as well as an assessment of the patient's rehabilitation potential and nursing care needs). Abstract information (*e.g.*, environmental, epidemiological and treatment regimen registries, etc.) is maintained in auxiliary paper and automated records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 501(b) and Section 304.

PURPOSE(S):

The paper and automated records may be used for such purposes as: Ongoing treatment of the patient; documentation of treatment provided; payment; health care operations such as producing various management and patient follow-up reports; responding to patient and other inquiries; for epidemiological research and other health care related studies; statistical analysis, resource allocation and planning; providing clinical and administrative support to patient medical care; determining entitlement and eligibility for VA benefits; processing and adjudicating benefit claims by Veterans Benefits Administration Regional Office (VARO) staff; for audits, reviews and investigations conducted by staff of the health care facility, the networks, VA Central Office, and the VA Office of Inspector General (OIG); sharing of health information between and among Veterans Health Administration (VHA), Department of Defense (DoD), Indian Health Services (IHS), and other government and private industry health care organizations; law enforcement investigations; quality assurance audits, reviews and investigations; personnel management and evaluation; employee ratings and performance evaluations, and employee disciplinary or other adverse action, including discharge; advising health care professional licensing or monitoring bodies or similar entities of activities of VA and former VA health care personnel; accreditation of a facility by an entity such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); and, notifying medical schools of medical students' performance and billing.

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. Disclosure of health care information as deemed necessary and proper to Federal, state and local government agencies and national health organizations in order to assist in the development of programs that will be beneficial to claimants, to protect their rights under law, and assure that they are receiving all benefits to which they are entitled.

2. Disclosure of health care information furnished and the period of care, as deemed necessary and proper, to accredited service organization representatives and other approved agents, attorneys, and insurance companies to aid claimants whom they represent in the preparation, presentation and prosecution of claims under laws administered by VA, state or local agencies.

3. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. 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.

4. A record from this system of records may be disclosed to a Federal agency or the District of Columbia government, in response to its request, in connection with the hiring or retention of an employee and the issuance of a security clearance as required by law, the reporting of an investigation of an employee, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

5. Disclosure of individually-identifiable health care information 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.

6. In response to an inquiry about a named individual from a member of the general public, disclosure may be made to establish the patient's presence (and location when needed for visitation purposes) in a medical facility or to report the patient's general condition while hospitalized (*e.g.*, satisfactory, seriously ill).

7. Relevant information may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, in matters of guardianship, inquests and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with Court required duties.

8. Relevant information may be disclosed to a guardian ad litem in relation to his or her representation of a claimant in any legal proceeding.

9. 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.

10. The name(s) and address(es) of present or former members of the armed services and/or their dependents may be disclosed under certain circumstances: (a) To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and (b) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701 (f).

11. The nature of the patient's illness, probable prognosis, estimated life expectancy and need for the presence of the related service member may be disclosed to the American Red Cross for the purpose of justifying emergency leave.

12. Any relevant information may be disclosed to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and to courts, boards, or commissions, only to the extent necessary to aid VA in preparation, presentation, and prosecution of claims authorized under Federal, state, or local laws, and regulations promulgated thereunder.

13. Disclosure of health information, excluding name and home address, (unless name and address is furnished by the requester) for research purposes determined to be necessary and proper, to epidemiological and other research entities approved by the Under Secretary for Health.

14. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel of the Armed Services and/or their dependents may be disclosed (a) to a Federal department or agency or (b) directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency and/or contractor to insure the appropriateness of the disclosure to the contractor.

15. Relevant information may be disclosed 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.

16. Health care information may be disclosed by the examining VA physician to a non-VA physician when that non-VA physician has referred the individual to the VA for medical care.

17. Patient medical records may be disclosed to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under authority of 44 U.S.C.

18. Health care information concerning a non-judicially declared incompetent patient may be disclosed to a third party upon the written authorization of the patient's next of kin in order for the patient or, consistent with the best interest of the patient, a member of the patient's family, to receive a benefit to which the patient or family member is entitled or, to arrange for the patient's discharge from a VA medical facility. Sufficient information to make an informed determination will be made available to such next of kin. If the patient's next of kin are not

reasonably accessible, the Chief of Staff, Director, or designee of the custodial VA medical facility may make disclosure of health care information for these purposes.

19. Disclosure may be made to a Federal agency or to a state or local government licensing board and/or to the Federation of State Medical Boards, or a similar non-government entity, which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, to inform a Federal agency or licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

20. In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the Human Immunodeficiency Virus (HIV), information may be disclosed to a Federal, state, or local public health authority that is charged under Federal or state law with the protection of the public health, and to which Federal or state law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law. The person to whom information is disclosed should be advised that they shall not re-disclose or use such information for a purpose other than that for which the disclosure was made [(38 U.S.C. 7332 (b)(2)(C)]. The disclosure of patient name and address under this routine use must comply with the provisions of 38 U.S.C. 5701 (f)(2).

21. Information indicating that a patient or subject is infected with the Human Immunodeficiency Virus (HIV) may be disclosed by a physician or professional counselor to the spouse of the patient or subject, or to an individual whom the patient or subject has a meaningful relationship, during the process of professional counseling or of testing, to determine whether the patient or subject is infected with the virus, identified as being a sexual partner of the patient or subject. Disclosures may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient or subject to provide the information to the spouse or sexual partner, and if the disclosure is necessary to protect the health of the spouse or sexual partner. Such disclosures should, to the extent feasible, be made by the patient's or subject's treating physician or professional counselor. Before any patient or subject gives consent to being tested for the HIV, as part of pre-testing counseling, the patient or subject must be informed fully about these notification procedures.

22. Identifying information, including 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 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.

23. Relevant information 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 Department 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.

24. Relevant health care information may be disclosed to a state veterans home for the purpose of medical treatment and/or follow-up at the state home when VA makes payment of a per diem rate to the state home for the patient receiving care at such home, and the patient receives VA medical care.

25. Relevant health care information may be disclosed to (a) a Federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services and the information is needed by the Federal agency or non-VA institution or provider to perform the services; or (b) a Federal agency or a non-VA hospital (Federal, state and local, public or private) or other medical installation having hospital facilities, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services, or share the use of medical resources under the provisions of 38 U.S.C 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit or, for VA to effect recovery of the costs of the medical care.

26. For program review purposes and the seeking of accreditation and/or certification, health care information may be disclosed to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accrediting agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

27. Relevant health care information may be disclosed to a non-VA nursing home facility that is considering the patient for admission, when information concerning the individual's medical care is needed for the purpose of preadmission screening under 42 CFR 483.20(f), for the purpose of identifying patients who are mentally ill or mentally retarded, so they can be evaluated for appropriate placement.

28. Information from a named patient's VA medical record which relates to the performance of a health care student or provider may be disclosed to a medical or nursing

school, or other health care related training institution, or other facility with which there is an affiliation, sharing agreement, contract, or similar arrangement when the student or provider is enrolled at or employed by the school or training institution, or other facility, and the information is needed for personnel management, rating and/or evaluation purposes.

29. Relevant health care information may be disclosed to individuals, organizations, private or public agencies, *etc.,* with whom VA has a contract or sharing agreement for the provision of health care or administrative services.

30. Identifying information, including social security number, of veterans, spouse(s) of veterans, and dependents of veterans, may be disclosed to other Federal agencies for purposes of conducting computer matches, to obtain information to determine or verify eligibility of veterans who are receiving VA medical care under Title 38, U.S.C.

31. The name and social security number of a veteran, spouse and dependent, and other identifying information as is reasonably necessary may be disclosed to the Social Security Administration, Department of Health and Human Services (HHS), for the purpose of conducting a computer match to obtain information to validate the social security numbers maintained in VA records.

32. The patient name and relevant health care information concerning an adverse drug reaction of a patient may be disclosed to the Food and Drug Administration (FDA), HHS, for purposes of quality of care management, including detection, treatment, monitoring, reporting, analysis and follow-up actions relating to adverse drug reactions.

33. Patient identifying information may be disclosed to Federal agencies and VA 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.

34. Pursuant to 38 U.S.C. 7464, and notwithstanding sections 5701 and 7332, when requested by a VA employee or former VA employee (or a representative of the employee) whose case is under consideration by the VA Disciplinary Appeals Board, in connection with the considerations of the Board, records or information may be reviewed by or disclosed to the employee or former employee (or representative) to the extent the Board considers appropriate for purposes of the proceedings of the Board in that case, when authorized by the chairperson of the Board.

35. Disclosure by a physician or professional counselor that a patient is infected with Hepatitis C may be made to the spouse, the person or subject with whom the patient has a meaningful relationship with, or to an individual whom the patient or subject has identified as being a sexual partner of the patient or subject.

36. Disclosure may be made to the Federal Labor Relations Authority, including its General Counsel, when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

37. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

38. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

39. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

40. Relevant health care information may be disclosed to health and welfare agencies, housing resources and utility companies, possibly to be combined with disclosures to other agencies, in situations where VA needs to act quickly in order to provide basic and/or emergency needs for the veteran and veteran's family where the family resides with the veteran or serves as a caregiver.

41. Disclosure of health care information may be made to funeral directors or representatives of funeral homes in order to allow them to make necessary arrangements prior to and in anticipation of a veteran's impending death.

42. Disclosure of health care information may be made to the FDA, or a person subject to the jurisdiction of the FDA, with respect to FDA-regulated products for purposes of reporting adverse events, product defects or problems, or biological product deviations; tracking products; enabling product recalls, repairs, or replacement; and/or conducting post marketing surveillance.

43. Disclosure of individually-identifiable health care information may be made to a non-VA health care provider, such as DoD or IHS, for the purpose of treating any VA patient, including veterans.

44. Disclosure of information may be made to telephone company operators acting in a capacity to facilitate phone calls to/for hearing impaired individuals, such as veterans, veteran's family members, non-VA providers, *etc.,* using Telephone Devices for the Hearing Impaired including Telecommunications Device for the Deaf (TDD) or Text Telephones (TTY).

45. In compliance with 38 U.S.C. 5313B(d), VA may disclose information to any Federal, state, local, tribal or foreign law enforcement agency in order to report a known fugitive felon.

46. Relevant health care information, excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia, and the names and home addresses of veterans and their dependents, may be disclosed by VA employees who are designated requesters (individuals who have completed a course offered or approved by an Organ Procurement Organization), or their designee for the purpose of determining suitability of a patient's organs or tissues for organ donation to an Organ Procurement Organization, a designated requester that is a non-VA employee, or their designees acting on behalf of local Organ Procurement Organizations.

47. Relevant heath care information may be disclosed to DoD, or its components, for individuals treated under 38 U.S.C. 8111A for the purposes deemed necessary by appropriate military command authorities to assure proper execution of the military mission.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, microfilm, electronic media or laser optical media in the consolidated health record at the health care facility where care was rendered, in the VA Health Data Repository, and at Federal Record Centers. In most cases, copies of back-up computer files are maintained at off-site locations. Subsidiary record information is maintained at the various respective services within the health care facility (*e.g.*, Pharmacy, Fiscal, Dietetic, Clinical Laboratory, Radiology, Social Work, Psychology, *etc.*) and by individuals, organizations, and/or agencies with whom VA has a contract or agreement to perform such services, as the VA may deem practicable.

Paper records are currently being relocated from Federal record centers to the VA Records Center and Vault. It is projected that all paper records will be stored at the VA Records Center and Vault by the end of the calendar year 2004.

RETRIEVABILITY:

Records are retrieved by name, social security number or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to working spaces and patient medical record storage areas in VA health care facilities is restricted to authorized VA employees. Generally, file areas are locked after normal duty hours. Health care facilities are protected from outside access by the Federal Protective Service and/or other security personnel. Access to patient medical records is restricted to VA employees who have a need for the information in the performance of their official duties. Sensitive patient medical records, including employee patient medical records, records of public figures, or other sensitive patient medical records are generally stored in separate locked files or a similar electronically controlled access environment. Strict control measures are enforced to ensure that access to and disclosures from these patient medical records are limited.

2. Access to computer rooms within health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Only authorized VA employees or vendor employees may access information in the system. Access to file information is controlled at two levels: the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file that is needed in the performance of their official duties. Information that is downloaded and maintained on personal computers must be afforded similar storage and access protections as the data that is maintained in the original files. Access by remote data users such as Veteran Outreach Centers, Veteran Service Officers (VSO) with power of attorney to assist with claim processing, VBA Regional Office staff for benefit determination and processing purposes, OIG staff conducting official audits or investigations and other authorized individuals is controlled in the same manner.

3. Access to the VA National Data Centers is generally restricted to Center 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 computer may be accessed by authorized VA employees at remote locations including VA health care facilities, VA Central Office, Veterans Integrated Service Networks (VISNs), and OIG Central Office and field staff. Access is controlled by individually unique passwords/codes that must be changed periodically by the employee.

4. Access to the VA Health Data Repository (HDR), located at the VA National Data Centers, is generally restricted to Center 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 computer may be accessed by authorized VA employees at remote locations including VA health care facilities, VA Central Office, VISNs, and OIG Central Office and field staff. Access is controlled by individually unique passwords/codes that must be changed periodically by the employee.

5. Access to records maintained at VA Central Office, the VA Boston Development Center, Chief Information Office Field Offices, and VISNs 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.

6. Computer access authorizations, computer applications available and used, information access attempts, frequency and time of use are recorded.

RETENTION AND DISPOSAL:

In accordance with the records disposition authority approved by the Archivist of the United States, paper records and information stored on electronic storage media are maintained for 75 years after the last episode of patient care then destroyed/deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Patient Medical Record: Director, Information Assurance (19F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Health Data Repository: Director, Health Data Systems (19–SL), Department of Veterans Affairs, 295 Chipeta Way, Salt Lake City, UT 84108.

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 Privacy Act Issuances. All inquiries must reasonably identify the portion of the medical record involved and the place and approximate date that medical care was provided. Inquiries should include the patient's full name, social security number and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of VA medical records may write, call or visit the last VA facility where medical care was provided.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The patient, family members or accredited representative, and friends,

employers; military service departments; 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 (58VA21/22/28); and various automated systems providing clinical and managerial support at VA health care facilities.

[FR Doc. 04–7819 Filed 4–6–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of new 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 establishing a new system of records entitled "National Patient Databases-VA'' (121VA19).

DATES: Comments on this new system of records must be received no later than May 7, 2004. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system will become effective May 7, 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 email comments to "*OGCRegulations@mail.va.gov''.* All relevant material received before May 7, 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:

Background: VHA is the largest health care provider in the country. In order to maintain this organization, VHA collects health care information from its local facilities to evaluate quality of services, clinical resource utilization, and patient safety, as well as to distribute medical information such as alerts or recalls, track specific diseases, and monitor patients. National-level information is also needed for other activities such as, medical research, the development of National Best Clinical Practice Guidelines, and National Quality Standards. VHA gathers this information received from a wide variety of sources to include data obtained directly from a veteran as well as from information systems located at VHA medical centers, Veterans Integrated Service Networks (VISN), other VHA facilities such as the Health Eligibility Center, and Federal departments and agencies such as the U.S. Department of Defense and the Food and Drug Administration. As the data is collected, VHA stores it in several national patient databases.

I. Description of Proposed Systems of Records

The proposed system of records contains health information such as, patient assessments, diagnoses, treatments, tests, and pharmaceutical data. The records include information created or collected during the course of normal clinical operations work and is provided by patients, employees, students, volunteers, contractors, subcontractors, and consultants. Quality assurance (QA) information that is protected by 38 U.S.C. 5701 and 38 CFR 17.500–17.511 is retrieved by individual identifier and therefore not within the scope of the Privacy Act. Therefore, QA information is not included in this system of records or filed in a manner so that the information may be retrieved by reference to an individual identifier.

VHA uses data stored in national patient databases to prepare various management, tracking, and follow-up reports necessary for the effective operation of VHA as it plans for and then delivers quality health care. This includes evaluating patient eligibility, benefits and care services; monitoring the distribution and utilization of resources including provider panel management; tracking disease and patient outcomes; program review, accreditation and licensing; quality assurance audits and investigations; law enforcement investigations; and measuring VISN performance. The data may be used to validate labor policies and practices and be extracted for use by VA researchers in accordance with established protocols. The data in a de-identified form may also be used for determining best practices.

The national databases covered by this system of records are identified and listed with their physical location in Appendix 4.

II. Proposed Routine Use Disclosures of Data in the System

To the extent that records contained in the system include information protected by 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 permitting disclosure.

VHA is proposing the following routine use disclosures of information to be maintained in the system:

1. On its own initiative, VA may disclose information, except for the names and home addresses 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, the 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.

VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide information to State or local agencies charged with protecting the public's health as set forth in state law.

2. Disclosure may be made to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an individual's eligibility, care history, or other benefits.

3. 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 disease tracking, patient outcomes or other health information required for program accountability.

4. Disclosure may be made to National Archives and Records Administration (NARA) for it to perform its records management inspections responsibilities and its role as Archivist of the United States under authority of Title 44 United States Code (USC).

NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to these agencies in order to determine the proper disposition of such records.

5. Any information in this system of records may be disclosed to the United States Department of Justice or United States Attorneys in order to prosecute or defend litigation involving or pertaining to the United States, or in which the United States has an interest.

6. Records from this system of records may be disclosed to a Federal agency or to a state or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the agency to obtain information relevant to an agency decision concerning the hiring, retention or termination of an employee.

7. Records from this system of records may be disclosed to inform a Federal agency, licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews but only to the extent that the information is necessary and relevant to the review.

VA health care facilities undergo certification and accreditation by several national accreditation agencies or boards to comply with regulations and good medical practices. VA must be able to disclose information for program review purposes and the seeking of accreditation and/or certification of health care facilities and programs.

9. Disclosure may be made to a national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

VA must be able to report information regarding the care a health care practitioner provides to a national certifying body charged with maintaining the health and safety of patients by making a decision about a health care professional's license, certification or registration, such as issuance, retention, revocation or other actions such as suspension.

10. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

11. Disclosure may be made to the VA-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

12. Disclosure may be made to officials of the Merit Systems Protection Board, and the Office of the Special Counsel, or both, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. or as may be authorized by law.

13. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

14. Disclosure may be made to the Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

The release of information to FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates.

15. Disclosure of medical record data, excluding name and address, unless name and address is furnished by the requester, may be made to epidemiological and other research facilities for research purposes determined to be necessary and proper when approved in accordance with VA policy.

16. Disclosure of name(s) and address(s) of present or former personnel of the Armed Services, and/or their dependents, may be made to: (a) A Federal department or agency, at the written request of the head or designee of that agency; or (b) directly to a contractor or subcontractor of a Federal department or agency, for the purpose of conducting Federal research necessary to accomplish a statutory purpose of an agency. When disclosure of this information is made directly to a contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

17. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement, including subcontractors, to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor to perform the services of the contract or agreement.

VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

18. 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.

Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

III. Compatibility of the Proposed Routine Uses

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 VA collected the information. In all of the routine use disclosures described above, either 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. The Veterans Health Administration (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.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of 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: March 22, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

121VA19

SYSTEM NAME:

National Patient Databases—VA.

SYSTEM LOCATION:

Records are maintained at Department of Veterans Affairs (VA) medical centers, VA Data Processing Centers, Veterans Integrated Service Networks (VISNs) and Office of Information (OI) Field Offices. Address location for each VA national patient database is listed in VA Appendix 4 at the end of this document.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records contain information for all individuals

(1) Receiving health care from the Veterans Health Administration (VHA), and

(2) Providing the health care.

Individuals encompass veterans and their immediate family members, members of the armed services, current and former employees, trainees, contractors, sub-contractors, consultants, volunteers, and other individuals working collaboratively with VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. Patient medical record abstract information including information from Patient Medical Record—VA (24VA136).

2. The record may include identifying information (*e.g.*, name, birth date, death date, admission date, discharge date, gender, social security number, taxpayer identification number); address information (*e.g.*, home and/or mailing address, home telephone number, emergency contact information such as name, address, telephone number, and relationship); prosthetic and sensory aid serial numbers; medical record numbers; integration control numbers; information related to medical examination or treatment (*e.g.*, location of VA medical facility providing examination or treatment, treatment dates, medical conditions treated or noted on examination); information related to military service and status;

3. Medical benefit and eligibility information;

4. Patient aggregate workload data such as admissions, discharges, and outpatient visits; resource utilization such as laboratory tests, x-rays, pharmaceuticals, prosthetics and sensory aids; employee workload and productivity data;

5. Information on services or products needed in the provision of medical care (*i.e.* pacemakers, prosthetics, dental implants, hearing aids, etc.); data collected may include vendor name and address, details about and/or evaluation of service or product, price/fee, dates purchased and delivered; and

6. Health care practitioner's identification number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 501.

PURPOSE(S):

The records and information may be used for statistical analysis to produce various management, workload tracking, and follow-up reports; to track and evaluate the ordering and delivery of equipment, services and patient care; for the planning, distribution and utilization of resources; to monitor the performance of Veterans Integrated Service Networks (VISN); and to allocate clinical and administrative support to patient medical care. The data may be used for VA's extensive research programs in accord with VA policy. In addition, the data may be used to assist in workload allocation for patient treatment services including provider panel management, nursing care, clinic appointments, surgery, diagnostic and therapeutic procedures; to plan and schedule training activities for employees; for audits, reviews and investigations conducted by the Network Directors Office and VA Central Office; for quality assurance audits, reviews and investigations; for law enforcement investigations; and for personnel management, evaluation and employee ratings, and performance evaluations.

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 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 permitting disclosure.

VA may disclose protected health information pursuant to the following routine uses where required by law, or permitted by 45 CFR parts 160 and 164.

1. On its own initiative, VA may disclose information, except for the names and home addresses 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 any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an individual's eligibility, care history, or other benefits.

3. 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 disease tracking, patient outcomes or other health information required for program accountability.

4. Disclosure may be made to National Archives and Records Administration (NARA) for it to perform its records management inspections responsibilities and its role as Archivist of United States under authority of Title 44 United States Code (USC).

5. Any information in this system of records may be disclosed to the United States Department of Justice or United States Attorneys in order to prosecute or defend litigation involving or pertaining to the United States, or in which the United States has an interest.

6. Records from this system of records may be disclosed to a Federal agency or to a state or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the agency to obtain information relevant to an agency decision concerning the hiring, retention or termination of an employee.

7. Records from this system of records may be disclosed to inform a Federal agency, licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews but only to the extent that the information is necessary and relevant to the review.

9. Disclosure may be made to a national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

10. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

11. Disclosure may be made to the representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

12. Disclosure may be made to officials of the Merit Systems Protection Board, and the Office of the Special Counsel, or both, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. or as may be authorized by law.

13. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

14. Disclosure may be made to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

15. Disclosure of medical record data, excluding name and address, unless name and address is furnished by the requester, may be made to epidemiological and other research facilities for research purposes determined to be necessary and proper when approved in accordance with VA policy.

16. Disclosure of name(s) and address(s) of present or former personnel of the Armed Services, and/or their dependents, may be made to: (a) A Federal department or agency, at the written request of the head or designee of that agency; or (b) directly to a contractor or subcontractor of a Federal department or agency, for the purpose of conducting Federal research necessary to accomplish a statutory purpose of an agency. When disclosure of this information is made directly to a contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

17. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement, including subcontractors, to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor to perform the services of the contract or agreement.

18. 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic storage media including magnetic tape, disk, laser optical media.

RETRIEVABILITY:

Records are retrieved by name, social security number or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to and use of national patient databases are limited to those persons whose official duties require such access, and VA has established security procedures to ensure that access is appropriately limited. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually unique codes and passwords. VA provides information security training to all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality.

2. Physical access to computer rooms housing national patient databases is restricted to authorized staff and protected by a variety of security devices. Unauthorized employees, contractors, and other staff are not allowed in computer rooms. The Federal Protective Service or other security personnel provide physical security for the buildings housing computer rooms and data centers.

3. Data transmissions between operational systems and national patient databases maintained by this system of record are protected by state of the art telecommunication software and hardware. This may include firewalls, encryption, and other security measures necessary to safeguard data as it travels across the VA Wide Area Network.

4. In most cases, copies of back-up computer files are maintained at off-site locations.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEMS AND MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures; Chief Information Officer (19), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Official maintaining this system of record; Director National Data Systems (192–3), Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the Director of National Data Systems (19F4), Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772. Inquiries should include the person's full name, social security number, location and dates of employment or location and dates of treatment, and their return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write or call the Director of National Data Systems (19F4), Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772, or call the VA Austin Automation Center Help Desk and ask to speak with the VHA Director of National Data Systems at 512–326–6780.

CONTESTING RECORD PROCEDURES:

(*See* Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by veterans, VA employees, VA computer systems, Veterans Health Information Systems and Technology Architecture (VistA), VA Medical Centers, VA Health Eligibility Center, VA Program Offices, VISNs, VA Austin Automation Center, the Food and Drug Administration, the Department of Defense, and the following Systems Of Records: "Patient Medical Records—VA'' (24VA136); "National Prosthetics Patient Database—VA'' (33VA113); "Healthcare Eligibility Records—VA'' (89VA19); and the VA Veterans Benefits Administration automated record systems (including the Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23)).

VA APPENDIX 4

Database name	Location
Addiction Severity Index	Veteran Affairs Medical Center, 7180 Highland Drive, Pittsburgh, PA 15206.
Continuous Improvement in Cardiac Surgery	Veteran Affairs Medical Center, 820 Clermont Street, Denver, CO 80220.
Cruetzfelet-Jakob Disease Lookback Dataset	Cincinnati VA Medical Center, 3200 Vine St., Cincinnati, Ohio 45220.
Eastern Pacemaker Surveillance Center Database	Veteran Affairs Medical Center, 50 Irving Street, NW., Washington, DC 20422.
Emerging Pathogens Initiative	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Federal Health Information Exchange	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Former Prisoner of War Tracking Statistical System	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Functional Status and Outcome Database	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Home Based Primary Care	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Clinical Case Registry	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Immunology Case Registry	Office of Information Field Office, 1st Ave., Building 37, Hines IL 60141.
Mammography Quality Standards VA	Veteran Affairs Medical Center, 508 Fulton Street, Durham, NC 27705.
Master Patient Index	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.

VA APPENDIX 4—Continued

Database name	Location
Medical SAS File (MDP) (Medical District Planning (MEDIPRO))	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Missing Patient Register	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
National Health Care Practitioner Database	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
National Mental Health Database System	Veteran Affairs Medical Center, 7180 Highland Drive, Pittsburgh, PA 15206.
National Patient Care Database	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
National Survey of Veterans	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Patient Assessment File	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Patient Treatment File	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
Radiation Exposure Inquiries Database	Office of Information Field Office, 1335 East/West Hwy., Silver Spring MD 20910.
Remote Order Entry System	Denver Distribution Center, 155 Van Gordon Street, Lakewood, CO 80228–1709.
Resident Assessment Instrument/Minimum Data Set	Austin Automation Center, 1615 Woodward Street, Austin, Texas 78772.
VA National Clozapine Registry	Veteran Affairs Medical Center, 4500 South Lancaster Road, Dallas, TX 75216.
Veterans Administration Central Cancer Registry	Veteran Affairs Medical Center, 50 Irving Street, NW., Washington, DC 20422.
KLF Menu	Austin Automation Center, 1615 Woodward Street, Austin, TX 78772.
Decision Support System	Austin Automation Center, 1615 Woodward Street, Austin, TX 78772.

[FR Doc. 04–7821 Filed 4–6–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
April 7, 2004

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224, and 660

Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224 and 660

[Docket No. 031125294–4091–02; I.D. 102903C]

RIN 0648–AP42

Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS publishes a final rule to implement the approved portions of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP), which was submitted by the Pacific Fishery Management Council (Pacific Council) for review and approval by the Secretary of Commerce and was partially approved on February 4, 2004, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intended effect of this final rule is to establish Federal management of manage U.S. fisheries for Pacific tunas, sharks, billfish, swordfish, and other highly migratory fish in the surface hook and line, drift gillnet, harpoon, pelagic longline, purse seine, and recreational fisheries in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California and (for U.S. vessels) in adjacent high seas waters. This final rule will prevent overfishing of the fish stocks to the extent practicable and achieve optimum yield for the U.S. fisheries involved while minimizing bycatch and protected species interactions consistent with the Magnuson-Stevens Act and other applicable law. The final rule implements consistent management of these fisheries with respect to the states, other fishery management councils, and international agreements. The final rule will promote the long-term economic health of the fisheries.

DATES: Effective May 7, 2004, except for §§ 660.704 Vessel identification, 660.707 Permits, 660.708 Recordkeeping and reporting, 660.712(d) Vessel monitoring system, 660.712(f) pre-trip notification, which are effective 60 days after the date of publication in the **Federal Register** of a notice announcing approval of the Paperwork Reduction Act clearance request for this information collection; and for § 660.712(e) Protected species workshop, which is effective January 1, 2005.

The prohibitions associated with the delayed requirements are applicable on the dates of the respective requirements as listed.

ADDRESSES: Copies of the FMP may be obtained from Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220–1384. Copies of the Final Environmental Impact Statement (FEIS) and associated final regulatory impact review (RIR) and final regulatory flexibility analysis (FRFA) are available from the Southwest Region, NMFS,501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Svein Fougner, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. and by e-mail to *David__Rostker@omb.eop.gov*, or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, NMFS, at 562–980–4040.

SUPPLEMENTARY INFORMATION: On December 10, 2003 (68 FR 68834), NMFS published a proposed rule to implement the proposed FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* That proposed rule summarized the history of development of the FMP and its proposed conservation and management measures, and that discussion will not be repeated here. The comment period for the proposed rule ended on January 26, 2004. All provisions of the proposed FMP were approved on February 4, 2004, except a provision applicable to longline fishing by vessels with permits issued under the FMP. That issue is discussed below.

This final rule and its authorizing FMP are a response to increasing concern about the effect of fishing on HMS off the U.S. West Coast and on ocean resources caught incidentally to fishing for HMS. HMS comprise numerous species of tuna, billfish, oceanic sharks and other species that range throughout the Pacific Ocean. A significant amount of information exists on some species, such as some of the tunas, but comprehensive stock assessments are needed for many species, which are harvested by numerous coastal and distant-water fishing nations throughout the Pacific Ocean. U.S. West Coast fishermen fish HMS in the U.S. exclusive economic zone (U.S. EEZ) and on the high seas, and in some cases (*e.g.*, Canada for albacore), in the exclusive economic zones of other nations.

Marine mammals, sea turtles, and sea birds caught incidentally to fishing are also affected by some of the fishing gear used to target HMS. The effect of fishing gear on protected resources is a problem throughout the Pacific Ocean, and the U.S. has taken action under the authority of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, to minimize the impact of U.S. vessels fishing longline, drift gillnet, and purse seine gear on these resources.

This final rule implements management measures necessary for management of the HMS fisheries, providing a foundation for future management actions that might be necessary as U.S. and international HMS fisheries change.

Management Unit Species

The species in the management unit are: striped marlin, swordfish, common thresher shark, pelagic thresher shark, bigeye thresher shark, shortfin mako (bonito shark), blue shark, north Pacific albacore, yellowfin tuna, bigeye tuna, skipjack tuna, northern bluefin tuna, and dorado (also commonly referred to as mahi mahi and dolphinfish).

Fishing Gear Employed

The commercial gears in the management unit are surface hook-and-line, drift gillnet, longline, purse seine, and harpoon. Charter recreational vessels are subject to permit and reporting requirements and may be subject to observer requirements. No specific requirements are established for anglers using hook-and-line gear.

Permits

The final rule requires a permit with an endorsement for a specific gear for all commercial vessels. A permit would also be required for all recreational charter vessels. The purpose of a permit is to identify the vessels in the HMS fisheries so that surveys can be made when management information is required and to notify all participants of potential management actions affecting the fisheries. Permits based on gear type make surveys more efficient because landing and economic information is often needed for specific gear types. Permits would be issued to the owner of a specific vessel for a 2-year term. Data would be maintained so that landings by the permitted vessel or by the owner

of the vessel can be summarized, which would give the Pacific Council flexibility in determining qualifications for limited entry permits if the Council should decide to develop a limited entry program. No Federal limited entry program is being proposed at this time because the Pacific Council does not have sufficient information to determine the need for such a program; however, the Pacific Council has assigned its HMS Management Team to begin evaluating a limited entry program for longline vessels fishing from West Coast ports. A limited entry program would require substantial analysis and an amendment to the FMP.

NMFS will administer the new permit system in the following manner. NMFS will begin the permit process by issuing HMS permit application forms to all individuals on this list with the required information filled in to the extent possible. Much of the needed information is already available. For example, NMFS has already compiled a list of vessels that would likely fall under the jurisdiction of the FMP. Permits are currently required for vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act of 1995 and for longline vessels fishing under the authority of the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Western Pacific Pelagics FMP). In compliance with U.S. obligations under the Tuna Conventions Act of 1950, NMFS has compiled and provided to the Inter-American Tropical Tuna Commission information for a vessel register including all U.S. vessels that fish for tuna in the eastern Pacific Ocean. This information will be put on the forms mailed to prospective permitees. There would be no performance criteria (*e.g.*, historic fishing) to qualify for a permit. However, the vessel owner would have to confirm information on the form and provide information for blank spaces on the form about the vessel or owner in order to have the permit activated by notice from NMFS. NMFS would then notify owners to confirm the activation of their permits when the final information is received and processed. Vessel owners who have not received confirmation of activation of a permit to harvest HMS within 30 days of submission of their applications should contact NMFS (see **ADDRESSES**) to advise of their interest. Persons who have not been sent an application form within 60 days of the effective date of the final rule and who want a permit will need to apply for an HMS permit. Application forms also will be available by mail and on the SWR home page for persons who have not been contacted by NMFS. Clearance has been requested under the Paperwork Reduction Act for the information collection associated with the permit process. A notice will be published in the **Federal Register** when approval of the collection has been received, and 60 days after that notice, any vessel fishing for HMS in the fishery management area, or landing HMS in Washington, Oregon or California, will have to have a valid HMS permit registered for use with that vessel. Once issued, the permit must be maintained on board the vessel unless the vessel was at sea when the permit was issued. There would be no cost to fishermen for this permit. Fishing can continue without a permit until the permit requirements are in effect.

Recording and Recordkeeping

The final rule requires all permit holders on commercial fishing vessels and recreational charter vessels to maintain a logbook of catch and effort in the HMS fisheries. The final rule also requires all permit holders to submit data in the form and manner specified by state laws. Logbooks must be submitted to the Regional Administrator or the appropriate state agency following the end of a fishing trip. Federal logbooks are now required for (1) vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act of 1995 (HSFCA); (2) vessels fishing for tuna under the authority of the Tuna Conventions Act of 1950; and (3) vessels fishing under the authority of the regulations implementing the Western Pacific Pelagics FMP. Under this final rule, the same form used under the HSFCA for troll vessels fishing albacore on the high seas would become mandatory for all albacore fishing. Clearance has been requested under the Paperwork Reduction Act for the information collection associated with the Federal logbook reporting requirement. A notice will be published in the **Federal Register** when approval of the collection has been received, and 60 days after that notice, any vessel fishing for HMS in the fishery management area, or landing HMS in Washington, Oregon or California, will have to report under these regulations. Until then, no new Federal reporting requirements are in effect. It is noted that there are currently several state reporting requirements in effect. The State of California requires a logbook for harpoon vessels, drift gillnet vessels, and recreational charter vessels. The State of Oregon requires a logbook for drift gillnet vessels. A person filing these state logbooks in the manner and form required by state law would satisfy Federal reporting requirements under this final rule. Duplicate logbooks would not be required. Logbook forms will be available for downloading from the Southwest Region home page.

Bycatch

A number of provisions are included in the FMP to assess and reduce bycatch; however, the FMP recognizes that better information is needed to assess the amount and type of bycatch in HMS fisheries. The FMP requires that NMFS, in consultation with the Pacific Council, its advisory bodies, and the fishery participants, develop observer sampling designs within 6 months of approval of the FMP for the longline, surface hook-and-line, small purse seine fisheries, and recreational charter vessel fisheries. However, a vessel operator of any vessel registered for use under these regulations must carry an observer when so requested by the Regional Administrator. An observer program is already in effect for drift gillnet vessels. In the longer term, NMFS will also develop an observer sampling plan for private recreational vessels to assess potential ways of improving information on managed species and on the quantity of bycatch in recreational fisheries.

Protected Species and the Framework Process

Drift gillnet and longline vessels encounter endangered and threatened sea turtles and marine mammals during fishing operations, and longline vessels encounter significant numbers of birds. Minimizing the impacts on these species has required regulatory action in the past under the authority of the MMPA and the ESA. Area closures and special equipment apply to drift gillnet and longline vessels. A possibility exists that other fishing gear used to harvest highly migratory species may also have an impact when more data is obtained. It also is likely that advances in gear or fishing techniques will reduce or prevent mortality from takes of these species in the future. The FMP recognizes that the Pacific Council is the body best suited to weigh and consider all potential impacts on fishing for HMS from West Coast ports. Section 118(f)(9) of the MMPA authorizes the Assistant Administrator for Fisheries (AA) to promulgate regulations governing commercial fishing operations to implement a take reduction plan to protect or restore a marine mammal stock or species. Likewise, vessels fishing for highly migratory species may have an impact on threatened or endangered species, which could

require action by the AA under the authority of the ESA. The Take Reduction Team established by the MMPA reports to NMFS and biological opinions provide guidance to NMFS on actions needed to protect threatened and endangered species. The AA will also look to the Pacific Council for recommendations on how best to implement any necessary measures. If appropriate, the Pacific Council will utilize the framework processes in the FMP to address these issues. This process does not prevent the AA from taking action under the authority of the MMPA and the ESA independent of the Council process.

Major Issues

The principal issue addressed in consideration of the Pacific Council's proposed FMP has been management of the West Coast longline fishery. The Council's preferred alternative with regard to longline fishing was (1) to prohibit longline fishing in the U.S. EEZ; (2) for longline vessels fishing outside the U.S. EEZ and east of 150° W. long., to adopt the same restrictions as those that applied in 2003 to longline vessels fishing with a longline limited entry permit under the Western Pacific Pelagics FMP, except that the restrictions that prevent shallow sets for swordfish would not apply; and (3) for longline vessels fishing west of 150° W. long., to adopt all of the restrictions that applied to longline vessels fishing with a longline limited entry permit under the Pelagic FMP in 2003, which effectively prohibited shallow sets for swordfish.

The restrictions as proposed to prevent shallow sets for swordfish west of 150° W. long. were designed to reduce the impact on threatened and endangered sea turtles, not swordfish; however, the Pacific Council felt that there was not sufficient information available about fishing interactions with sea turtles in the eastern Pacific to justify restricting swordfish sets east of 150° W. long. Thus, owners of longline vessels fishing out of West Coast ports whose vessels were not registered for use under a western Pacific longline limited entry permit would have been able to target swordfish in the eastern Pacific east of 150° W. long. They also would have had to comply with all other restrictions, including the requirement to maintain a VMS on board the vessel, line clippers, and dip nets, as well as complying with the proper handling of sea turtles and seabirds.

This approach would have established consistency (west of 150° W. long.) with regulations applicable at the present time to vessels fishing under regulations implementing the Western Pacific Pelagics FMP, while minimizing the economic impact on vessels fishing from West Coast ports by not imposing the restrictions east of 150° W. long.

In reviewing the proposed FMP, however, NMFS engaged in consultations under section 7 of the ESA to evaluate the impacts of the fisheries on species listed as threatened or endangered under that statute. The consultation concluded that allowing shallow sets for swordfish east of 150° W. long. would appreciably reduce the likelihood of survival and recovery in the wild of loggerhead sea turtles. Therefore, that provision of the FMP has been disapproved, and NMFS is proceeding with rulemaking under the authority of the ESA to protect sea turtles east of 150° W. long. Those regulations could become effective at the same time as or even before the final rule implementing the FMP and would remain in effect as long as necessary to ensure that the fishery is operated to conform to the ESA. The rule will be found at 50 CFR Part 223.

In addition, this final rule has a new § 660.720 to ensure adequate protection for sea turtles in the period between implementation of the final rule and implementation of specific provisions that are contingent on vessels being registered for use for specific gear types. The sea turtle conservation provisions in § 660.712 and associated prohibitions of this rule pertaining to longline fishing are generally tied to the effective date by which vessels must be registered for use with specific gear under permits being issued under the rule. The final rule provides vessel owners with time to obtain those permits after the permit requirement becomes effective, which as noted earlier will depend on clearance under the Paperwork Reduction Act. To ensure that excessive sea turtle takes will not occur while permits are being processed and issued, this rule establishes sea turtle protective provisions (*e.g.*, no shallow swordfish sets, no possession of light sticks, incidental swordfish landing limit of 10 fish per trip, gear requirements) to be implemented immediately for West Coast longline vessels fishing west of 150° W. long. even though permit requirements are not yet effective.

All other provisions of the proposed FMP were approved and this final rule implements those provisions.

Comments and Responses

Comment 1: One comment indicated that the FMP violates the MMPA. This comment stated that the California-Oregon drift gillnet fishery is currently operating without any take authorization for ESA listed marine mammals. It asserted that NMFS on October 30, 2000, illegally issued a permit under section 101(a)(5)(E) of the MMPA allowing take of sperm, fin, humpback, and eastern stock of stellar sea lion. Further, it asserted that the permit has now expired. Authorizing the continuation of the drift gillnet fishery through promulgation of the final rule to implement the FMP without a lawful permit based on a current finding of negligible impact, and without a recovery plan for the impacted species, would, therefore, be unlawful. The commenter also asserted that the continuation of the drift gillnet fishery violates the MMPA because the fishery has not reached the zero mortality rate goal (ZMRG) called for by the MMPA, notwithstanding that NMFS has yet to define ZMRG as required under the MMPA. The 2003 Draft Pacific Stock Assessment Report estimates 23 Northern Right Whale dolphins mortalities per year in this fishery which is in excess of the ZMRG for the species (8–16 depending on interpretation). Similar concerns were raised for the take of short-finned pilot, sperm, humpback, and fin whales.

Response: It is correct that the drift gillnet fishery is not operating under an MMPA section 101(a)(5)(E) permit at this time; however, NMFS is in the process of preparing a **Federal Register** document that will consider the necessity of issuance of a permit to authorize the incidental take of listed marine mammals under the ESA by the California/Oregon drift gillnet fishery under section 101(a)(5)(E) of the MMPA. There have been no listed marine mammals observed taken by the California/Oregon drift gillnet fishery since NMFS issued its 101(a)(5)(E) permit in 2000. This final rule maintains the closure of the fishery (now implemented under the authority of the MMPA and ESA) from February 1 through April 30 each year off California and Oregon, and a 101(a)(5)(E) permit would not be necessary during this period. If NMFS concludes that there is a permit requirement, appropriate action will be taken before the fishery reopens.

In addition, in 1996, NMFS convened the Pacific Offshore Cetacean Take Reduction Team to address the serious injury and mortality of strategic marine mammals stocks that were incidentally taken during commercial fishing operations by the California/Oregon drift gillnet fishery. In 1997, NMFS issued regulations to implement the Pacific Offshore Cetacean Take Reduction Plan (POCTRP). The POCTRP

has been successful at reducing strategic marine mammal stocks to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. In addition, the Pacific Offshore Cetacean Take Reduction Team and the Pacific Scientific Review Group have both recommended no further strategies to reduce marine mammals caught incidentally by the California/Oregon drift gillnet fishery.

Comment 2: One comment indicated that the FMP violates the Magnuson-Stevens Act with respect to bycatch because the FMP provides no tangible management measures to reduce bycatch levels as required under the Magnuson-Stevens Act. For example, the California-Oregon Drift Gill Net fishery has high rates of bycatch of ocean sunfish and blue sharks and no actions are proposed to reduce this bycatch. Likewise, the large vessel tuna purse seine fishery catches juvenile tunas and sharks, yet the FMP does not include measures to address these bycatch issues.

Response: The Magnuson-Stevens Act requires that FMPs establish a standardized reporting methodology for assessing bycatch; reduce bycatch to the extent practicable; and reduce mortality of unavoidable bycatch to the extent practicable. In the recreational fishery, this includes a voluntary catch and release program in which released fish would not be considered bycatch. The Magnuson-Stevens Act does not require measures to reduce bycatch that are not practicable. In accordance with the Magnuson-Stevens Act, NMFS is developing a bycatch protocol that describes common elements of a standardized bycatch reporting methodology for fisheries under the jurisdiction of the agency. Consistent with this protocol, Chapter 5 of the FMP reviews all the fisheries to assess bycatch and evaluates the potential and practicability of alternative approaches (gear modifications, changes in fishing techniques, time/area closures, etc.) to reduce bycatch and of unavoidable bycatch mortality as required. The FMP concludes in most instances that measures already in place address bycatch to the extent practicable, though it is noted that the collection of additional information through observer programs is necessary to provide a better factual basis for developing and evaluating new alternatives. The final regulations require mandatory recording and submission of fishing logbooks for all commercial gear types and for the recreational CPFV fishery. For those HMS fisheries not already carrying at-sea observer's under authority of the MMPA or the ESA, the FMP will authorize the placement of observers on board at the discretion of the NMFS Regional Administrator to document, among other things, bycatch and protected species interactions. The FMP mandates NMFS to develop observer coverage levels and sampling designs based on the analysis of available observer data and following, to the extent practical, elements of the bycatch protocol. In the meantime, with respect to specific bycatch concerns for individual fisheries, it is noted that the majority of the ocean sunfish captured as bycatch in the DGN fishery are released alive. There are no known practicable means to reduce the bycatch levels in the fishery at this time. In the purse seine fishery, measures adopted by NMFS under the Inter-American Tropical Tuna Commission (IATTC) tuna fisheries management program addresses bycatch of juvenile tuna to the extent practicable at this time, though additional research is being pursued to determine if there are additional approaches (*e.g.*, possible use of sidescan sonar to identify small fish prior to making a set) that can help reduce catches of small tuna. No other measures to reduce bycatch or bycatch mortality are determined to be practicable at this time.

Comment 3: One comment indicated that the action violates the National Environmental Policy Act (NEPA) because the FEIS for this action lacked full information about, or insufficient analysis of, seabird, marine mammal, sea turtle, and finfish bycatch under the proposed alternatives. In addition, a complete ban on longline and/or DGN gear types was not analyzed as an alternative.

Response: On December 22, 2003, NOAA filed with the Environmental Protection Agency the FEIS for the FMP in combination with the ESA rule. On January 2, 2004 (69 FR 69), the notice of availability for the FEIS was published in the **Federal Register**. The FEIS fully analyzes all the alternatives available to the Pacific Council and NMFS, including full analysis of seabird, marine mammal, sea turtle, and finfish bycatch and measures to avoid adverse impacts (and in the case of ESA species, jeopardy) from the fisheries as they would operate under the FMP. At the start of the FMP process, including scoping, the Pacific Council considered such alternatives as eliminating certain gear types, but there was little public interest in or desire for eliminating the DGN fishery or for eliminating the longline fishery as long as this gear was not permitted within the U.S. EEZ. Therefore, the Pacific Council did not further evaluate total elimination of these gears as the Pacific Council concluded these were not reasonable alternatives in its documents.

Comment 4: One comment indicated that current information shows that there are better seabird avoidance gear modifications and techniques than those in the FMP, which proposes the measures required for Hawaii-based longline vessels fishing under the FMP for the Western Pacific Pelagics FMP. This comment also indicated that the Migratory Bird Treaty Act (MBTA) imposes obligations on U.S. fishers, and the FMP does not meet those obligations.

Response: The information provided by the reviewer on seabird avoidance gear is from recent targeted studies and was not available to the Pacific Council during FMP development. The information will be provided to the Pacific Council for future consideration. The comment does not indicate what provisions of the MBTA have been violated; no violations are apparent to NMFS. This statute does not apply beyond the Territorial Sea of the U.S., and HMS fisheries occur almost exclusively beyond the Territorial Sea.

Comment 5: One comment indicated that the FMP might result in duplication of, or conflicts with, existing international agreements such as under the Tuna Conventions Act, and noted that the majority of the waters through which north Pacific albacore tuna migrate are out of the Pacific Council's jurisdiction. On a related theme, another comment recommended that the proposal to include tuna as managed species be disapproved because (a) unilateral management cannot be effective and (b) the FMP could result in serious harm to U.S. fisheries. This comment also suggests that the Council process is not suited to considering the international aspects of management of tuna fisheries and tuna stocks.

Response: NMFS does not anticipate any duplication or conflicts with international programs. Measures recommended by the IATTC and approved by the U.S. Department of State will continue to be implemented under the Tuna Conventions Act, 16 U.S.C. 951 *et seq.* The FMP will not affect implementation of the U.S-Canada Albacore Treaty as amended or affect fishing under that Treaty. The FMP will not affect implementation of the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific if and when that agreement is ratified by the U.S. In

fact, the data collected under the FMP through logbooks and observer programs should provide better factual support to the U.S. in its activities in these international bodies. Similarly, the Council management process involves broad public involvement with transparent decision making and is, therefore, a good vehicle for the U.S. Department of State and NMFS to obtain advice on issues and opportunities for international collaboration to resolve issues. Further, the FMP notes that the ability to take management action under the Tuna Conventions Act (and later statutes to implement other treaties) is very limited and falls short of the authority needed and available under the Magnuson-Stevens Act for addressing domestic fishery problems. For example, the Tuna Conventions Act would not authorize regulation of any U.S. fisheries without recommendations from the IATTC.

Comment 6: One comment urged NMFS to take a stronger role in advocating international agreements for the protection of leatherback turtles killed by foreign fishermen targeting swordfish.

Response: NMFS is actively promoting international action for sea turtle conservation, both through international organizations and conventions and through direct discussions with other nations. For example, reduction of sea turtle takes and mortalities is a major new issue in the IATTC, where NMFS is supporting strong action to deal with this problem. NMFS is also aggressively distributing information about the results of its experimentation with new longline gear and techniques to reduce sea turtle takes and mortality. Actions taken to implement the FMP and the companion ESA rule demonstrate that the U.S. is actively regulating its own fisheries even as it promotes international collaboration.

Comment 7: One comment urged that NMFS use flexibility to reduce a burdensome time and area closure for the drift gill net fishery; the reviewer felt this closure was unnecessary and not supportable.

Response: The FMP proposed that current drift gill net fishery regulations be continued but under Magnuson-Stevens Act authority. The action to approve, disapprove, or disapprove in part the FMP is not an appropriate mechanism for implementing the requested change, which is beyond the scope of the Council proposals. The Council is the appropriate body for considering the request, and the views provided will be forwarded to the Pacific Council for its use.

Comment 8: One comment addressed the economic impacts of the NMFS decision to approve most of the FMP and then possibly impose the additional ESA rule. That comment indicated that the ESA rule would effectively eliminate the West Coast longline fishery as it was dependent on swordfish and would not be able to survive targeting tuna or other species.

Response: NMFS recognizes that the longline fishery is likely to be severely curtailed if not eliminated, at least in the short term, if both rules were finalized. NMFS acknowledges that it does not expect that longline fishing for species (*e.g.*, tuna) other than swordfish will provide a profitable fishery based on current information. However, NMFS also believes that there may be alternatives available to the longline fishers in the future. First, NMFS is currently considering a proposal from the Western Pacific Fishery Management Council that would alleviate much of the burden for longline vessels fishing out of Hawaii. That proposal effectively would reopen longline fishing for swordfish by vessels registered for use under western Pacific longline limited entry permits. If approved, this would provide an alternative fishing opportunity for most West Coast vessels, whose owners would be able to register their vessels for use under western Pacific longline limited entry permits. Second, NMFS research has demonstrated that longline fishing may be sufficiently protective of sea turtles if certain gear and bait combinations are required, especially if adopted with additional controls on overall fishing effort. The PFMC will be encouraged to explore the possible adoption of such measures to alleviate the burden placed on the West Coast fleet for the short term. In this context, it is noted that the fishery is generally at a low level in the summer and early fall, and the PFMC may be able to fashion an effective regulatory regime by the end of 2004. However, no changes have been made to the final rule at this time to respond to this comment.

Comment 9: A large number of letters and faxes were received supporting the proposed FMP and urging its approval. Most of these letters supported the proposal not to allow longline fishing in the EEZ due to bycatch and protected species interaction concerns. One letter specifically objected to the provision of the proposed FMP to allow longline fishing for swordfish outside the EEZ and east of 150° W. long.

Response: The FMP was approved as submitted with the exception of the provision allowing longline fishing for swordfish east of 150° W. long. The final rule reflects that decision.

Changes From the Proposed Rule

After consideration of public comments and other considerations, the following changes have been made from the proposed rule.

1. The term of permits in the final rule has been changed from the 5 years originally proposed to 2 years. A review of experience in other fisheries and other regions demonstrates that a permit period of 2 years or less is more effective in ensuring accurate information about patterns of fishery participation and the names and addresses of participants in the fisheries. A 5-year permit term would result in a high probability that changes in vessel names and owners and interests of related businesses will not be reported or recorded. In turn, NMFS might be unable to advise interested parties be adequately of changes in management measures or in permit and reporting requirements in the future. Further, the permit term will be staggered so that there will be less likelihood of an extreme permit renewal burden at any one time of the year. This is more efficient for NMFS and more likely to result in delivery of new permits to the fishers in a timely manner.

2. The final rule clearly establishes that initial permit decisions are made by the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS. This was inadvertently not discussed in the proposed rule. The final rule also includes a provision for appeals of permit decisions to the Regional Administrator. Experience in other permit programs indicates a need for an appeal process to review decisions that applicants believe are incorrect or based on inappropriate interpretation of facts.

3. A provision has been added to the final rule to require that longline vessel operators or owners contact the Southwest Region, NMFS, or a designated agent, prior to departure on a fishing trip. This requirement is identical to a provision in the rules implementing the Western Pacific Pelagics FMP. It is expected that the provision in the ESA rule discussed above that prohibits shallow longline sets will result in a low level of longline fishing because swordfish sets will be prohibited and sets targeting tuna are not expected to support a profitable fishery, at least for most of the year. NMFS has little information about the extent to which such fishing will result in interactions with sea turtles or other bycatch problems, and intends to place

observers when available to ensure collection of this needed information when the opportunity arises. This provision will not become effective until Paperwork Reduction Act approval has been received.

4. The final rule includes a provision that permits, once issued, be on board vessels and available for inspection by an authorized agent unless the vessel was at sea when the permit was issued, in which case the permit must be on board the vessel on the next trip. This was inadvertently omitted from the proposed rule.

5. A new provision was added to § 660.712 to cross-reference the prohibition of shallow swordfish sets by longline vessels being implemented at 50 CFR Part 223. This will clearly indicate that operators of longline vessels managed under this subpart are subject to the provisions of the regulations in 50 CFR 223 if they plan to use longline gear in waters beyond the EEZ and east of 150° W. long. This is necessary to ensure that the fishing vessel operators do not construe the absence of the prohibition in the final rule implementing the FMP to mean that such sets would be permitted.

6. The vessel marking requirement has been changed to be consistent with regulations for other fisheries issued under the Magnuson-Stevens Act and to recognize the differing features of different size vessels. The final rule requires markings of 18 inches (45.7 cm) or greater for vessels 65 ft (20 m) in length or greater; and markings of 10 inches (25.4 cm) or greater for vessels less than 65 ft (20 m) length.

7. The final rule clarifies that a vessel is prohibited from fishing without an observer on board when the vessel owner or operator has been advised of the requirement to carry an observer.

8. The final rule contains a new § 660.720 to establish temporary provisions to limit longline fishing by West Coast vessels operating on the high seas of the Pacific Ocean west of 150° W. long. These interim measures will expire with the implementation of the permit requirements of § 660.707 and the longline fishery control measures in § 660.712. It is necessary to implement these temporary provisions to ensure that excessive sea turtle takes do not occur from unlimited longline fishing before the effective date of those permit requirements.

9. A number of technical changes were made for clarity and to correct errors in the proposed rule. Section 660.703 was revised to indicate that the management area includes all waters where vessels subject to this subpart may fish. With this change, the definition of fishery management area in § 660.702 was deleted as it was unnecessary. The procedures for processing permit applications and issuing permits under § 660.707 have been clarified and tied to approval of the Paperwork Reduction Act clearance request. The language detailing reporting requirements under § 660.708 has been revised to more clearly describe the extent to which use of existing logbooks satisfy reporting requirements under this subpart and to tie the requirements to approval of the Paperwork Reduction Act clearance request for this collection.

Classification

This final rule is implementing the approved portions of the FMP that were found to be consistent with the national standards of the Magnuson-Stevens Act and other applicable laws

The Pacific Council prepared and submitted the final FMP in the form of a final environmental impact statement. NOAA prepared addendum materials to reflect the decision to partially approve the FMP and to implement additional ESA regulations. These addendum materials were filed along with the final Pacific Council document as a Final Environmental Impact Statement that satisfies NEPA requirements for documentation and analysis of the impacts on the human environment of the fisheries as they would operate under the FMP. The FEIS was filed with the Environmental Protection Agency on December 22, 2003, and is available from the Southwest Region, NMFS (*see* **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that described the economic impact this rule, if implemented, would have on small entities. No comments were received on any aspect of the IRFA. One comment on the proposed rule addressed the economic impacts of the proposed rule and is addressed in the response to Comment 8 of this final rule. NMFS then prepared a FRFA for this final rule. The FRFA is available from NMFS (*see* **ADDRESSES**). A summary of the FRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** portions of this final rule. A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. For related fish-processing businesses, the SBA considers a small business to be one that employs 500 or fewer persons. For marinas and charter/party boats, the SBA considers a small business to be one with annual receipts not in excess of $5.0 million. Fishing vessels targeting HMS and some businesses that support harvesters (especially buyers of swordfish from longline vessels) are expected to be the only types of small entities directly impacted by the proposed actions. The total number of vessels is estimated to be about 1,337, broken down as follows:

Purse Seine 27
Surface Hook-and-Line 887
Drift Gillnet 121
Longline 20
Harpoon 32
Charter 250
Total 1,337

In addition, approximately 100 small businesses are involved with the fisheries as processors and buyers of fish taken in HMS fisheries. None of their activities will be regulated under the FMP. The regulatory actions under the FMP that would result in a reduction in domestic landings of HMS are expected to be offset at the processor level by imports at comparative prices. None of the regulatory alternatives considered were expected to add to the costs or reduce revenues of marinas and charter boats. No comments were received directly addressing the IRFA, but one comment addressed the economic impacts of the NMFS decision to approve most of the FMP and then impose the additional ESA rule. That comment indicated that the added rule would effectively eliminate the West Coast longline fishery as it was dependent on swordfish and would not be able to survive targeting tuna or other species. NMFS recognizes that this is a likely result in the short term.

NMFS considered and evaluated a wide range of alternatives in the RIR/FRFA (*see* **ADDRESSES**), including not implementing the FMP, specifying different mixes of gears and species in the management unit, and deferring immediate regulations, as well as considering different types of regulations, for the drift gillnet and longline fisheries. NMFS concluded that the provisions in this final rule are necessary and appropriate for effective conservation and management of the HMS fisheries.

The final rule establishes regulations for 5 commercial fishing fleets and a fleet of recreational charter vessels. Each fleet has its own gear requirements, each has a differential impact on ocean resources, and each has different economic circumstances. The final rule defines commercial legal HMS gear as

harpoon, surface hook and line, drift gillnet of at least 14 inch (35.56 cm) stretched mesh or greater, purse seine, and pelagic longline. The FMP authorizes rod and reel, spear, and hook and line as recreational gear. The principal economic effects are on the drift gillnet and longline fishing fleets.

An alternative for drift gillnet gear was to allow stretched mesh less than 14 inches (35.56 cm). The selected alternative of requiring 14 inch (35.56 cm) stretched mesh or larger for legal drift gillnet gear is consistent with the historic use of drift gillnet used to target swordfish and sharks. Fishermen estimated that there may be as many as 8–10 vessels that occasionally use small-mesh drift gillnets when albacore and bluefin tuna are available. Landings data indicate that there could be as many as 20 vessels that might have fished small-mesh drift gillnets based on landing receipts for drift gillnet vessels landing albacore and bluefin tuna, but not swordfish. Vessels fishing small mesh drift gillnet gear would be restricted to landing HMS only as an incidental catch. The economic impact on the four vessels that have been documented as using small mesh drift gillnets amounts to between 20 percent and 48 percent of gross receipts. These vessels landed between 1.0 and 15.0 mt of albacore and 0.0 to 3.0 mt of bluefin tuna during the 2001 season. The vessels might make up for the lost revenue through other small mesh gillnet fisheries or simply return to using large mesh nets because all four vessels also currently possess permits for use of the larger mesh gear. Vessels currently fishing large mesh nets would suffer no economic loss under this alternative as they would not need to modify their gear or current fishing practices. The opportunity for albacore surface hook-and-line vessels to deploy small mesh drift gillnet gear to target albacore while on overnight trips would be preempted under this alternative. Loss of this opportunity would prevent realization of potential efficiency gains from landing more albacore per unit of time on the water.

For drift gillnet vessels using 14 (35 cm) inch stretched mesh or greater, the FMP adopts all Federal conservation and management measures in place under the MMPA and ESA; adopts all state regulations for drift gillnet fishing under Magnuson-Stevens Act authority, except limited entry programs, which will remain under state authority; modifies an Oregon closure inside 1000 fathoms to be in effect year round; closes U.S. EEZ waters off Washington to all drift gillnet vessels; and implements turtle protection closures north of Point Sur, CA to 45° N. lat. (August 15 to November 15), and south of Pt. Conception to 120° W. long. during a forecasted or occurring El Nino event (June, July, and August). Existing Federal and state regulations, including current state drift gillnet time-area closures and gear restrictions were deemed appropriate for adopting. However, the Pacific Council concluded that implementing the existing state limited entry programs, which would significantly increase Federal costs and administrative burdens, was premature. Closures off Washington and Oregon are intended to protect the common thresher shark, sea turtles and marine mammals. This action modifies the current state regulations to prohibit, year round, drift gillnet fishing for swordfish and sharks in U.S. EEZ waters off Oregon east of a line approximating the 1,000 fm curve (deleting an existing May-August prohibition within 75 nautical miles) and prohibits drift gillnet fishing in all U.S. EEZ waters off Washington. The State of Washington currently does not allow the use of drift gillnet gear and Oregon does not allow drift gillnets to target thresher shark, although drift gillnet vessels have fished off both states and landed their catch in California.

Approximately 64 vessels actively participate in the drift gillnet fishery off the U.S. West Coast (see table below). All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

With respect to longline fishing, the final rule prohibits the use of pelagic longline gear in the U.S. EEZ. This action continues the *de facto* longline prohibition throughout the U.S. EEZ by states' regulations and minimizes potential bycatch of fish and protected species, and reduces fishery competition problems. There are no vessels participating in a pelagic longline fishery within the U.S. EEZ off the U.S. West Coast. Oregon is the only state that allows pelagic longlining within the U.S. EEZ on a case by case basis, and no landings have occurred. All of the Oregon vessels would be considered small businesses under the SBA standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

Financial impacts of each pelagic longline regulatory alternative considered for adoption within the U.S. EEZ were evaluated based on incremental changes from the status quo; *i.e.*, the difference between pelagic longline ex-vessel private profits under the proposed action and pelagic longline private profits under the status quo. Because there are no empirical financial data available for this fishery, comparisons are based on the application of economic theory to potential fishing opportunities arising from the regulatory alternatives. The following table reports the estimated incremental qualitative changes in short-run financial profits for vessels for each regulatory alternative relative to the status quo. Financial impacts are evaluated as the present value of changes in short-run financial profits over a 25 year time period discounted at 7 percent and 4 percent discount rates. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25-Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Pelagic Longline w/in the U.S. EEZ Alternative 1: Current state measures would remain in place under states' authorities and there would be no new Federal regulations governing longline use in the U.S. EEZ. (Status Quo/No Action)	NC	NC
Pelagic Longline w/in the U.S. EEZ Alternative 2: Establishes a general prohibition on the use of pelagic longline gear in the U.S. EEZ. (Final rule action)	NC	NC
Pelagic Longline w/in the U.S. EEZ Alternative 3: Prohibits longlining within the West Coast U.S. EEZ by indefinite moratorium, with the potential for re-evaluation by the Council following completion of a bycatch reduction research program with pre-established strict protocols. Must prove negligible impact on protected and bycatch species.	NQ+	NQ+
Pelagic Longline w/in the U.S. EEZ Alternative 4: Authorizes a limited entry pelagic longline fishery for tunas and swordfish within the U.S. EEZ, with effort and area restrictions, to evaluate longline gear as an alternative to DGN gear to reduce bycatch or bycatch mortality and protected species interactions.	NQ+	NQ+
Pelagic Longline w/in the U.S. EEZ Alternative 5: Prohibits longlining within the West Coast U.S. EEZ with the potential for re-evaluation by the Council following completion of a tuna-swordfish-bycatch research experiment carried out under a qualified EFP to determine if longline gear can be fished in ways that produce bycatch and protected species interaction levels that are significantly less than by drift gillnets (a=0.05).	NQ+	NQ+

There are not expected to be any financial impacts associated with Alternative 2 because it essentially represents the status quo. It would have eliminated the Oregon longline fishery, authorized outside 25 miles under the State's developmental fisheries program permit system. However, there are no active Oregon permits at the present time. This alternative would also eliminate the potential opportunity now available to West Coast based commercial fishermen for fishing off Oregon and California and landing in Oregon, which is currently not being exercised. The other alternatives offered potential increases in financial profits if it could be scientifically determined that there would not be an adverse impact on bycatch and protected species interactions.

Beyond the U.S. EEZ, the final rule applies to West Coast-based longline vessels all of the restrictions applied to Hawaii-based longline vessels when fishing west of 150° W. long. Restrictions control sea turtle and seabird interactions and improve monitoring of the fishery. A total of 38 vessels participated in the West Coast-based, high seas pelagic longline fishery during 2001. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

Financial impacts of each high seas pelagic longline regulatory alternative considered were evaluated based on incremental changes from the status quo; *i.e.*, the difference between pelagic longline ex-vessel private profits under the proposed action and pelagic longline private profits under the no action alternative. The table below reports the estimated incremental changes in short-run financial profits for pelagic longline vessels for each regulatory alternative relative to the status quo. Financial impacts are evaluated as the present value of changes in short-run financial profits projected over a 25 year time period, discounted at 7 percent and 4 percent discount rates. The annual average change in short-run financial profits is also shown. The changes in financial profit were estimated using cost and earnings data voluntarily provided by industry members.

Under the status quo, regulations would not be promulgated to implement the FMP measures for the high seas, West Coast-based pelagic longline fishery. Fishing could continue without regulations until regulations are established under other authorities. Therefore, without the FMP, the future of the West Coast-based pelagic longline fishery operating on the high seas was expected to be different from recent conditions. Swordfish is the target species of this fishery, and swordfish sets would likely be prohibited; gear restrictions (no light sticks, minimum depth of sets, line clippers to release sea turtles) would apply; and seabird avoidance methods would be required. Longline fishing targeting tuna on the high seas out of West Coast ports might then be an alternative if swordfish targeting is prohibited, but current participants in the fishery indicate that without being able to target swordfish, the high seas longline fishery originating from West Coast ports would cease to exist. In view of this likelihood, the estimated financial impacts relative to Alternative 1 assumed that (absent action through this final rule) regulations are likely in the future that would prohibit West Coast-based pelagic longliners from targeting swordfish on the high seas, and that under those circumstances the fishery would cease to exist. Alternative 2, however, would have allowed the fishery to continue under selected restrictions, and the financial impact of Alternative 2, shown below, is based on a projection of current private profits in the fishery. Estimates of current private profits do not include the private costs that might be incurred in adopting turtle and seabird saving measures, placement of observers, and the installation and use of VMS, and any lost revenues from being unable to fish in waters bounded by 15° N. lat. and the equator and by 145° W. long. and 180° W. long. during April and May. Therefore, private profits under Alternative 2 in the table below may be overstated. While some West Coast-based, high seas pelagic longliners harvest species other than swordfish, no attempt was made to evaluate potential changes in fishing strategies by these vessels in response to different harvest opportunities under each of the regulatory alternatives, and what this would mean in terms of operating costs and ex-vessel revenues under alternative fishing strategies. Alternative 3 (the action being taken in

this final rule) prohibits swordfish targeting in all waters by U.S. West Coast longline vessels. Under this alternative, it is expected that the fishery would cease in the long run, in which case there is no difference from the status quo.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25-Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
High Seas Pelagic Longline Alternative 1: States' regulations would apply to longline fishing and landings and Federal regulations may be developed under other authorities. Vessels would have to obtain HSFCA permits and file HSFCA logbooks, as is now the case. (Status Quo/No Action)	NC	NC
High Seas Pelagic Longline Alternative 2: Applies to West Coast-based longline vessels fishing west of 150° W longitude all of the restrictions applied to Hawaii-based longline vessels, but east of 150° W long., applies selected restrictions, allowing West Coast-based vessels to target swordfish east of that line. (Proposed Action)		$6,712,558
7 percent Discount Rate	$78,225,581	
4 percent Discount Rate	$105,645,527	
High Seas Pelagic Longline Alternative 3: Applies to West Coast-based longline vessels all conservation and management measures applied to Hawaii-based longline vessels to control sea turtle and seabird interactions and to monitor the fishery in all waters (final rule action).		NC
7 percent Discount Rate	NC	
4 percent Discount Rate	NC	

Alternative 2 would have maintained the fishery, but imposed some slight additional costs on West Coast-based longliners targeting swordfish on the high seas. Fishermen would have incurred some of the cost of adopting turtle and seabird saving measures, accommodating observers and using monitoring equipment such as a vessel monitoring system. Therefore, under Alternative 2 there would have been a slight reduction in annual short-run, financial profits from those reported above. There may also have been reductions in swordfish catch rates due to the alternative of turtle and seabird mitigation measures. This could have further reduced short-run, financial profits. In the absence of this rule, the fishery would likely have been subject to regulations promulgated under other authorities, which would be expected to result in the longline fishery's disappearance in time. This is reflected in the long-term status quo, Alternative 1, where financial profits become zero with a phase out of the fishery. In the near term however, the fishery could persist under existing state regulations, in which case short-run financial profits would be expected to be $6.8 million per year under the status quo. These are the same as the annual average financial profits that would be expected under Alternative 2 minus the cost of adopting turtle and seabird saving measures, accommodating observers and using monitoring equipment such as vessel monitoring systems. Short and long-term profits would disappear under Alternative 3 with the prohibition on targeting swordfish. Therefore, in the long term, Alternative 3 is the same as the status quo. As noted above, all of the longline vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

The actions in the final rule were selected because they best meet the requirements of the Magnuson-Stevens Act and the ESA. Continuation of the drift gillnet rules under Magnuson-Stevens Act authority will facilitate timely management of the fishery in a public process with necessary protection for marine mammals and sea turtles. Allowing swordfish targeting without additional controls would result in fishing that appreciably reduced the likelihood of survival and recovery in the wild of loggerhead sea turtles, a species listed as threatened under the ESA. Prohibiting swordfish targeting was necessary to avoid jeopardy to this species. Other alternatives that were considered would not have provided the necessary protection to sea turtles.

NMFS also believes that there are or may be in the near term alternatives available to the longline fishers. First, NMFS is considering a proposal that would alleviate much of the burden for longline vessels fishing out of Hawaii. That proposal effectively would reopen longline fishing for swordfish by vessels registered for use under western Pacific longline limited entry permits. If approved, this would provide an alternative fishing opportunity for most West Coast vessels, whose owners would be able to register their vessels for use under western Pacific longline limited entry permits. Second, NMFS research has demonstrated that longline fishing may be sufficiently protective of sea turtles if certain gear and bait combinations are required, especially if adopted with additional controls on overall fishing effort. The Pacific Council will be encouraged to explore the possible adoption of such measures to alleviate the burden placed on the West Coast fleet for the short term. In this context, it is noted that the fishery is generally at a low level in the summer and early fall, and the Pacific Council may be able to fashion an effective regulatory regime by the end of 2004. However, no changes have been made to the final rule at this time. The action would impose new reporting and recordkeeping requirements for some HMS vessels. Application forms for permits must be confirmed and/or completed by owners seeking permits for all commercial gears and charter vessels. All commercial vessels and charter vessels must maintain and submit logbooks of catch and effort in the fisheries. State logbooks may satisfy this requirement, and this final rule includes a requirement that vessel owners and operators comply with all applicable regulations requiring reports to state agencies. A pre-trip notification is required for longline vessels. Also,

longline vessels must have vessel monitoring system units on their vessels, provided by and installed at NMFS expense.

No specific actions have been taken to minimize the economic impacts on owners and operators of West Coast longline vessels, as there are no alternatives available that will meet the requirements of the Magnuson-Stevens Act and the ESA. The ESA requires that activities that would jeopardize the continued existence of any species listed under that act be prohibited or curtailed. All the alternatives that allowed swordfish targeting by longline vessels would fail to meet the test of the ESA and therefore would violate the Magnuson-Stevens Act. The original proposal to prohibit swordfish targeting west of 150° W. long. and allow it east of 150° W. long. resulted in a jeopardy conclusion under the ESA. There is reason to believe that adjustments (such as gear and bait requirements) can be made in the future management program that will alleviate the burden and allow the West Coast longline fishery to resume, albeit perhaps at a lower level. It will take some time, however, to develop and implement any such changes in management. No adjustments are needed for other fishery sectors as there are minimal economic impacts from the final rule.

This FMP contains collection-of-information requirements for 6 separate fisheries subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval. The public reporting burden for these requirements is estimated to average 20–35 minutes for a permit application depending on the extent of correction of information on application forms and of new information to be submitted on those forms; 5 minutes for a pre-trip notification by longline vessel operators; and 45 minutes to affix the official number of a vessel to its bow and weather deck. In addition, for longline vessels, there would be a burden of 4 hours for installation of a vessel monitoring system, 2 hours for maintenance of the system, 24 seconds for each electronic report submitted via the satellite based vessel monitoring system; and 5 minutes for filling out a log each day. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information 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 information technology. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to, Svein Fougner, Assistant Administrator for Sustainable Fisheries, NMFS, Southwest Region (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the 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 requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule is consistent with the ESA. A formal consultation with NMFS Protected Resources under the ESA was initiated on September 23, 2003. Based on the conclusions of the consultation, the Regional Administrator determined that fishing activities under this final rule, when considered in combination with a rule being promulgated under the authority of the ESA, would not jeopardize the continued existence of any species. Consultations were also completed with the U.S. Fish and Wildlife Service (USFWS), which concluded that the fisheries would not jeopardize the continued existence of any listed species under the USFWS jurisdiction.

The Regional Administrator determined that fishing activities conducted under this final rule would have no adverse impacts on marine mammals.

List of Subjects in 50 CFR

Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

Part 660

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

Dated: March 25, 2004.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR parts 223, 224, and 660, are amended as follows:

50 CFR Chapter VI

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

§ 223.206 [Amended]

■ 2. In § 223.206, paragraph (d)(6) is removed and reserved.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 4. In § 224.104, paragraph (c) is revised to read as follows:

§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

* * * * *

(c) Special prohibitions relating to sea turtles are provided at § 223.206 (d)(2)(iv).

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

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

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

6. Add Subpart K to read as follows:

Subpart K—Highly Migratory Fisheries

Sec.

660.701 Purpose and scope.
660.702 Definitions.
660.703 Management area.
660.704 Vessel identification.
660.705 Prohibitions.
660.706 Pacific Coast Treaty Indian rights.
660.707 Permits.
660.708 Reporting and recordkeeping.
660.709 Annual specifications.
660.710 Closure of directed fishery.
660.711 General catch restrictions.
660.712 Longline fishery.
660.713 Drift gillnet fishery.
660.714 Purse seine fishery. [Reserved.]
660.715 Harpoon fishery. [Reserved.]
660.716 Surface hook-and-line fishery. [Reserved.]
660.717 Framework for revising regulations.
660.718 Exempted fishing.

660.719 Scientific observers.
660.720 Interim protection for sea turtles.

Subpart K—Highly Migratory Fisheries

§ 660.701 Purpose and scope.

This subpart implements the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP). These regulations govern commercial and recreational fishing for HMS in the U.S. EEZ off the coasts of Washington, Oregon, and California and in adjacent high seas waters.

§ 660.702 Definitions.

Basket-style longline gear means a type of longline gear that is divided into units called *baskets*, each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

Closure, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited.

Commercial fishing means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, retaining, possessing, landing and/or sale of fish; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial fishing gear includes the following types of gear and equipment used in the highly migratory species fisheries:

(1) Harpoon. Gear consisting of a pointed dart or iron attached to the end of a pole or stick that is propelled only by hand and not by mechanical means.

(2) Surface hook-and-line. Fishing gear, other than longline gear, with one or more hooks attached to one or more lines (includes troll, rod and reel, handline, albacore jig, live bait, and bait boat). Surface hook and line is always attached to the vessel.

(3) Drift gillnet. A panel of netting, 14 inch (35.5 cm) stretched mesh or greater, suspended vertically in the water by floats along the top and weights along the bottom. A drift gillnet is not stationary or anchored to the bottom.

(4) Purse seine. An encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets.

(5) Pelagic longline. A main line that is suspended horizontally in the water column and not stationary or anchored, and from which dropper lines with hooks (gangions) are attached. Legal longline gear also includes basket-style longline gear.

Council means the Pacific Fishery Management Council, including its Highly Migratory Species Management Team (HMSMT), Scientific and Statistical Committee (SSC), Highly Migratory Species Advisory Subpanel (HMSAS), and any other committee established by the Council.

Fishing trip is a period of time between landings when fishing is conducted.

Fishing year is the year beginning at 0801 GMT (0001 local time) on April 1 and ending at 0800 GMT on March 31 (2400 local time) of the following year.

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

Highly Migratory Species (HMS) means species managed by the FMP, specifically:

Billfish/Swordfish:
striped marlin (*Tetrapturus audax*)
swordfish (*Xiphias gladius*)
Sharks:
common thresher shark (*Alopias vulpinus*)
pelagic thresher shark (*Alopias pelagicus*)
bigeye thresher shark (*Alopias superciliosus*)
shortfin mako or bonito shark (*Isurus oxyrinchus*)
blue shark (Prionace glauca)
Tunas:
north Pacific albacore (*Thunnus alalunga*)
yellowfin tuna (*Thunnus albacares*)
bigeye tuna (*Thunnus obesus*)
skipjack tuna (*Katsuwonus pelamis*)
northern bluefin tuna (*Thunnus orientalis*)
Other:
dorado or dolphinfish (*Coryphaena hippurus*)

Highly Migratory Species Advisory Subpanel (HMSAS) means the individuals comprised of members of the fishing industry and public appointed by the Council to review proposed actions for managing highly migratory species fisheries.

Highly Migratory Species Fishery Management Plan (FMP) means the Fishery Management Plan for the U.S. West Coast Fisheries for Highly Migratory Species developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce and amendments to the FMP.

Highly Migratory Species Management Team (HMSMT) means the individuals appointed by the Council to review, analyze, and develop management measures for highly migratory species fisheries.

Incidental catch or incidental species means HMS caught while fishing for the primary purpose of catching other species with gear not authorized by the FMP.

Land or landing means offloading fish from a fishing vessel or arriving in port to begin offloading fish or causing fish to be offloaded from a fishing vessel.

Mesh size means the opening between opposing knots in a net. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot when the mesh is stretched, regardless of twine size.

Offloading means removing HMS from a vessel.

Permit holder means a permit owner.

Permit owner means a person who owns an HMS permit for a specific vessel fishing with specific authorized fishing gear.

Person, as it applies to fishing conducted under this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or to process means the preparation or packaging of HMS to render it suitable for human consumption, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting or freezing at sea unless additional preparation is done.

Prohibited species means those species and species groups whose retention is prohibited unless authorized by other applicable law (for example, to allow for examination by an authorized observer or to return tagged fish as specified by the tagging agency).

Quota means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

Recreational charter vessel means a vessel that carries fee-paying passengers for the purpose of recreational fishing.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only and not for sale or barter.

Regional Administrator means the Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS, Office of Enforcement, Southwest Region, or a designee of the Special Agent-In-Charge.

Sustainable Fisheries Division (SFD) means the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, or his or her designee.

Transhipment means offloading or otherwise transferring HMS or products thereof to a receiving vessel.

Vessel monitoring system unit (VMS unit) means the hardware and software equipment owned by NMFS, installed on vessels by NMFS, and required by this subpart K to track and transmit the positions from fishing vessels.

§ 660.703 Management area.

The fishery management area for the regulation of fishing for HMS has the following designations and boundaries:

(a) Southern boundary—the United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35′22″ N. lat. 117°27′49″ W. long.
32°37′37″ N. lat. 117°49′31″ W. long.
31°07′58″ N. lat. 118°36′18″ W. long.
30°32′31″ N. lat. 121°51′58″ W. long.

(b) Northern boundary—the United States-Canada Provisional International Boundary, which is a line connecting the following coordinates:

48°29′37.19″ N. lat. 124°43′33.19″ W. long.
48°30′11″ N. lat. 124°47′13″ W. long.
48°30′22″ N. lat. 124°50′21″ W. long.
48°30′14″ N. lat. 124°54′52″ W. long.
48°29′57″ N. lat. 124°59′14″ W. long.
48°29′44″ N. lat. 125°00′06″ W. long.
48°28′09″ N. lat. 125°05′47″ W. long.
48°27′10″ N. lat. 125°08′25″ W. long.
48°26′47″ N. lat 125°09′12″ W. long.
48°20′16″ N. lat. 125°22′48″ W. long.
48°18′22″ N. lat. 125°29′58″ W. long.
48°11′05″ N. lat. 125°53′48″ W. long.
47°49′15″ N. lat. 126°40′57″ W. long.
47°36′47″ N. lat. 127°11′58″ W. long.
47°22′00″ N. lat. 127°41′23″ W. long.
46°42′05″ N. lat. 128°51′56″ W. long.
46°31′47″ N. lat. 129°07′39″ W. long.

(c) Adjacent waters on the high seas in which persons subject to this subpart may fish.

§ 660.704 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The official number must be affixed to each vessel subject to this subpart in block Arabic numerals at least 10 inches (25.40 cm) in height for vessels more than 25 ft (7.62 m) but equal to or less than 65 ft (19.81 m) in length; and 18 inches (45.72 cm)in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background.

§ 660.705 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for HMS in the U.S. EEZ off the Pacific coast without a permit issued under § 660.707 for the use of authorized fishing gear.

(b) Fish with gear in any closed area specified in this subpart that prohibits the use of such gear.

(c) Land HMS at Pacific coast ports without a permit issued under § 600.707 for the use of authorized fishing gear.

(d) Sell HMS without an applicable commercial state fishery license.

(e) When fishing for HMS, fail to return a prohibited species to the sea immediately with a minimum of injury.

(f) Falsify or fail to affix and maintain vessel markings as required by § 660.704.

(g) Fish for HMS in violation of any terms or conditions attached to an exempted fishing permit issued under § 600.745 of this chapter.

(h) When a directed fishery has been closed for a specific species, take and retain, possess, or land that species after the closure date.

(i) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(j) Falsify or fail to make and/or file any and all reports of fishing, landing, or any other activity involving HMS, containing all data, and in the exact manner, required by the applicable state law, as specified in § 660.708(b).

(k) Fail to carry aboard a vessel that vessel's permit issued under § 660.707 or exempted fishing permit issued under § 660.718, except if the permit was issued while the vessel was at sea.

(l) Fail to carry a VMS unit as required under § 660.712(d).

(m) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC.

(n) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit.

(o) Fish for, catch, or harvest HMS with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS.

(p) Possess on board a vessel without a VMS unit HMS harvested with longline gear after NMFS has installed the VMS unit on the vessel.

(q) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed west of 150° W. long. and north of the equator (0° lat.) on a vessel registered for use of longline gear in violation of § 660.712(a)(1).

(r) Possess a light stick on board a longline vessel when fishing west of 150° W. long. and north of the equator (0° lat.) in violation of § 660.712(a)(6)

(s) Possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing west of 150° W. long. and north of the equator (0° lat.) in violation of § 660.712(a)(9).

(t) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit.

(u) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer.

(v) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC.

(w) Fish for HMS with a vessel registered for use of longline gear within closed areas or by use of unapproved gear configurations in violation of § 660.712(a)(2), (a)(3), (a)(7), (a)(8), or (a)(9).

(x) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use of longline gear and equipped with monofilament main longline, when making deep sets north of 23° N. lat. in violation of § 660.712(c)(1)(i) and (c)(1)(ii).

(y) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use of longline gear north of 23° N. lat. in violation of § 660.712 (c)(1)(iii).

(z) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use of longline gear that is fishing north of 23° N. lat., in violation of § 660.712(c)(2) and (c)(3).

(aa) Fail to retain, handle, and discharge fish, fish parts, and spent bait strategically when operating a vessel registered for use of longline gear that is fishing north of 23° N. lat. in violation of § 660.712 (c)(4) through (c)(7).

(bb) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-

term survival, in violation of § 660.712(c)(8).

(cc) Fail to handle seabirds other than short-tailed albatross that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival in violation of § 660.712(c)(17).

(dd) Own a longline vessel registered for use of longline gear that is engaged in longline fishing for HMS without a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.712(e)(3).

(ee) Fish for HMS on a vessel registered for use of longline gear without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.712(e).

(ff) Fail to carry line clippers, dip nets, and wire or bolt cutters on a vessel registered for use as a longline vessel in violation of § 660.712(b).

(gg) Fail to comply with sea turtle handling, resuscitation, and release requirements specified in § 660.712(b)(4) through (7) when operating a vessel.

(hh) Fail to comply with seabird take mitigation or handling techniques required under § 660.712(c)

(ii) Fish for HMS with a vessel registered for use as a longline vessel without being certified by NMFS for completion of an annual protected species workshop as required under § 660.712(e).

(jj) Fail to notify the Regional Administrator at least 24 hours prior to departure on a fishing trip using longline gear as required under § 660.712(f).

(kk) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, direct fishing effort toward the harvest of swordfish or fail to have and use gear in waters west of 150° W. long. in violation of § 660.720.

(ll) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, possess a light stick on board a longline vessel on the high seas of the Pacific Ocean west of 150° W. long. north of the equator in violation of § 660.720 (a)(ii).

(mm) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing on the high seas of the Pacific Ocean west of 150° W. long. north of the equator in violation of § 660.720 (a)(iii).

(nn) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, fail to employ basket-style longline gear such that the mainline is deployed slack when fishing on the high seas of the Pacific Ocean west of 150° W. long. north of the equator, in violation of § 660.720 (a)(iv).

(oo) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, when a conventional monofilament longline is deployed by a vessel subject to this section, deploy fewer than 15 branch lines between any two floats, in violation of § 660.720 (a)(v). Vessel operators using basket-style longline gear may not set less than 10 branch lines between any 2 floats when fishing in waters west of 150° W. long. north of the equator.

(pp) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, fail to deploy longline gear such that the deepest point of the main longline between any two floats, *i.e.*, the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface, in violation of § 660.720 (a)(vi).

§ 660.706 Pacific Coast Treaty Indian rights.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest HMS in their usual and accustomed (u&a) fishing areas in U.S. waters.

(b) Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) NMFS recognizes the following areas as marine u&a fishing grounds of the four Washington coastal tribes. The Makah u&a grounds were adjudicated in *U.S.* v. *Washington*, 626 F.Supp. 1405, 1466 (W.D. Wash. 1985), affirmed 730 F.2d 1314 (9th Cir. 1984). The u&a grounds of the Quileute, Hoh, and Quinault tribes have been recognized administratively by NMFS (*See, e.g.*, 64 FR 24087 (May 5, 1999) (u&a grounds for groundfish); 50 CFR 300.64(i) (u&a grounds for halibut)). The u&a grounds recognized by NMFS may be revised as ordered by a Federal court.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary of Commerce, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the NMFS Northwest Regional Administrator, at least 120 days prior to the time the allocation is desired to be effective, and will be subject to public review through the Council process. The Secretary of Commerce recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary of Commerce will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is prima facie evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) Fishing (on a tribal allocation or under a Federal regulation applicable to tribal fisheries) by a member of a Pacific Coast treaty Indian tribe within that tribe's u&a fishing area is not subject to provisions of the HMS regulations applicable to non-treaty fisheries.

(g) Any member of a Pacific Coast treaty Indian tribe must comply with any applicable Federal and tribal laws and regulations, when participating in a tribal HMS fishery implemented under paragraph (d) of this section.

(h) Fishing by a member of a Pacific Coast treaty Indian tribe outside that tribe's u&a fishing area, or for a species of HMS not covered by a treaty allocation or applicable Federal regulation, is subject to the HMS regulations applicable to non-treaty fisheries.

§ 660.707 Permits.

(a) *General.* This section applies to vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington.

(1) A commercial fishing vessel of the United States must be registered for use under a HMS permit that authorizes the use of specific gear, and a recreational charter vessel must be registered for use under a HMS permit if that vessel is used:

(i) To fish for HMS in the U.S. EEZ off the States of California, Oregon, and Washington; or

(ii) To land or transship HMS shoreward of the outer boundary of the U.S. EEZ off the States of California, Oregon, and Washington.

(2) The permit must be on board the vessel and available for inspection by an authorized officer, except that if the permit was issued while the vessel was at sea, this requirement applies only to any subsequent trip.

(3) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(4) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) an HMS permit.

(b) *Application.* (1) Following publication of the final rule implementing the FMP, NMFS will issue permits to the owners of those vessels on a list of vessels obtained from owners previously applying for a permit under the authority of the High Seas Fishing Compliance Act, the Tuna Conventions Act of 1950, the Marine Mammal Protection Act, and the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, or whose vessels are listed on the vessel register of the Inter-American Tropical Tuna Commission.

(2) All permits issued by NMFS in accordance with paragraph (b)(1) of this section will authorize the use of specific fishing gear by the identified commercial fishing vessels.

(3) An owner of a vessel subject to these requirements who has not received an HMS permit from NMFS and who wants to engage in the fisheries must apply to the SFD for the required permit in accordance with the following:

(i) A Southwest Region Federal Fisheries application form may be obtained from the SFD or downloaded from the Southwest Region home page (*http://swr.nmfs.noaa.gov/permits.htm*) to apply for a permit under this section. A completed application is one that contains all the necessary information and signatures required.

(ii) A minimum of 15 days should be allowed for processing a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(iii) A permit will be issued by the SFD. If an application is denied, the SFD will indicate the reasons for denial.

(iv) *Appeals.* (A) Any applicant for an initial permit may appeal the initial issuance decision to the RA. To be considered by the RA, such appeal must be in writing and state the reasons for the appeal, and must be submitted within 30 days of the action by the RA. The appellant may request an informal hearing on the appeal.

(B) Upon receipt of an appeal authorized by this section, the RA will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

(C) Upon receipt of sufficient information, the RA will decide the appeal in accordance with the permit provisions set forth in this section at the time of the application, based upon information relative to the application on file at NMFS and the Council and any additional information submitted to or obtained by the RA, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the RA deems appropriate. The RA will notify all interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(D) If a hearing is requested, or if the RA determines that one is appropriate, the RA may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant, and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the RA.

(E) The RA may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the RA will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The RA's decision will constitute the final administrative action by NMFS on the matter.

(F) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the RA for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

(4) Permits issued under this subpart will remain valid until the first date of renewal, and permits may subsequently be renewed for 2-year terms. The renewal date will be the last day of the month designated by the last digit of the vessel identification number (*e.g.*, if the vessel identification number ends in 3, the renewal date is March 31, 2 years later). The first renewal requirement will occur after the first year of the initial permit but before the end of the second year of the initial permit.

(5) Replacement permits may be issued without charge to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(6) Any permit that has been altered, erased, or mutilated is invalid.

(c) *Display.* Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing HMS shoreward of the outer boundary of the fishery management area unless the vessel was at sea at the time the permit was issued. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(d) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

§ 660.708 Reporting and recordkeeping.

(a) *Logbooks.* The operator of any commercial fishing vessel and any recreational charter vessel fishing for HMS in the management area must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Administrator or a state agency. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to either the Regional Administrator or the appropriate state management agency within 30 days of each landing or transhipment of HMS. Each form must be signed and dated by the fishing vessel operator.

(1) Logbooks that meet the logbook reporting requirement may be found at *http://swr.nmfs.noaa.gov/logbooks.htm* and include:

(i) The logbook required under 50 CFR 300.21 implementing the Tuna Conventions Act of 1950;

(ii) The logbook required under § 660.14 implementing the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region;

(iii) The logbook required by 50 CFR 300.17 implementing the High Seas Fishing Compliance Act of 1995.

(iv) Any logbook required by the fishery management agency of the States of California, Oregon, or Washington.

(2) Any holder of a permit who does not submit logbooks under any of the above authorities must submit a written request to the SFD for the appropriate logbook. The applicant must provide his or her name and address, the name of

the vessel, and the type of fishing gear used.

(3) The Regional Administrator may, after consultation with the Council, act to modify the information to be provided on the fishing record forms.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of HMS containing all data, and in the exact manner, required by the applicable state law.

§ 660.709 Annual specifications.

(a) *Procedure.* (1) In June of each year, the HMSMT will deliver a preliminary SAFE report to the Council for all HMS with any necessary recommendations for harvest guidelines, quotas or other management measures to protect HMS.

(2) In September of each year, the HMSMT will deliver a final SAFE report to the Council. The Council will adopt any necessary harvest guidelines, quotas or other management measures for public review.

(3) In November each year, the Council will take final action on any necessary harvest guidelines, quotas, or other management measures and make its recommendations to NMFS.

(4) The Regional Administrator will implement through rulemaking any necessary and appropriate harvest guidelines, quotas, or other management measures based on the SAFE report, recommendations from the Council, and the requirements contained in the FMP.

(b) Fishing seasons for all species will begin on April 1 of each year at 0001 hours local time and terminate on March 31 of each year at 2400 hours local time.

(c) Harvest guidelines, quotas, and other management measures announced for a particular year will be in effect the following year unless changed through the public review process described in paragraph (a) of this section.

(d) Irrespective of the normal review process, the Council may propose management action to protect HMS at any time. The Council may adopt a management cycle different from the one described in this section provided that such change is made by a majority vote of the Council and a 6-month notice of the change is given. NMFS will implement the new schedule through rulemaking.

§ 660.710 Closure of directed fishery.

(a) When a quota has been taken, the Regional Administrator will announce in the **Federal Register** the date of closure of the fishery for the species of concern.

(b) When a harvest guideline has been taken, the Regional Administrator will initiate review of the species of concern according to section 8.4.8 of the FMP and publish in the **Federal Register** any necessary and appropriate regulations following Council recommendations.

§ 660.711 General catch restrictions.

(a) Prohibited species. HMS under the FMP for which quotas have been achieved and the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmon.

(2) Great white shark.

(3) Basking shark.

(4) Megamouth shark.

(5) Pacific halibut.

(b) *Incidental landings.* HMS caught by gear not authorized by this subpart may be landed in incidental amounts as follows:

(1) Drift gillnet vessels with stretched mesh less than 14 inches may land up to 10 HMS per trip, except that no swordfish may be landed.

(2) Bottom longline vessels may land up to 20 percent by weight of management unit sharks in landings of all species, or 3 individual sharks of the species in the management unit, whichever is greater.

(3) Trawl and pot gear vessels may land up to 1 percent by weight of management unit sharks in a landing of all species or 2 individual sharks of the species in the management unit, whichever is greater.

(c) *Marlin prohibition.* The sale of striped marlin by a vessel with a permit under this subpart is prohibited.

(d) *Sea turtle handling and resuscitation.* All sea turtles taken incidentally in fishing operations by any HMS vessel other than vessels subject to § 660.712 must be handled in accordance with 50 CFR 223.206(d)(1).

§ 660.712 Longline fishery.

(a) *Gear and fishing restrictions.* (1) Owners and operators of vessels registered for use of longline gear may not use longline gear to fish for or target HMS within the U.S. EEZ.

(2) Owners and operators of vessels registered for use of longline gear may not make shallow sets with longline gear to fish for or target swordfish (*Xiphias gladius*) west of 150° W. long. and north of the equator (0° N. lat.).

(3) A person aboard a vessel registered for use of longline gear fishing for HMS west of 150° W. long. and north of the equator (0° N. lat.) may not possess or deploy any float line that is shorter than or equal to 20 m (65.6 ft or 10.9 fm). As used in this paragraph, float line means a line used to suspend the main longline beneath a float.

(4) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not use longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(5) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not receive from another vessel HMS that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(6) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not land or transship HMS that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(7) No light stick may be possessed on board a vessel registered for use of longline gear during fishing trips that include any fishing west of 150° W. long. and north of the equator (0° N. lat.). A light stick as used in this paragraph is any type of light emitting device, including any flourescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(8) When a conventional monofilament longline is deployed in waters west of 150° W. long. and north of the equator (0° N. lat.) by a vessel registered for use of longline gear, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing in waters north of the equator.

(9) Longline gear deployed west of 150° W. long. and north of the equator (0° N. lat.) by a vessel registered for use of longline gear must be deployed such that the deepest point of the main longline between any two floats, *i.e.*, the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(10) Owners and operators of longline vessels registered for use of longline gear may land or posses no more than 10 swordfish from a fishing trip where any part of the trip included fishing west of 150° W. long. and north of the equator (0° N. lat.).

(11) Owners and operators of longline vessels registered for use of longline gear are subject to the provisions at 50 CFR part 223 prohibiting shallow sets to target swordfish in waters beyond the U.S. EEZ and east of 150° W. long. and establishing that no more than 10 swordfish may be landed by a longline

vessel registered for use of longline gear from a trip if any sets of longline gear were made on that trip in those waters.

(b) *Sea turtle take mitigation measures.* (1) Owners and operators of vessels registered for use of longline gear must carry aboard their vessels line clippers meeting the minimum design standards specified in paragraph (b)(2) of this section, dip nets meeting minimum standards specified in paragraph (b)(3) 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 hook as possible in accordance with the requirements specified in paragraphs (b)(4) through (b)(7) of this section.

(2) Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (see figure 1 to § 660.32). The minimum design standards are as follows:

(i) The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(3) Dip nets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that minimizes injury and trauma to sea turtles. The minimum design standards for dip nets that meet the requirements of this section are:

(i) The dip net must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion.

(ii) The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm x 7.62 cm).

(4) All incidentally taken sea turtles brought aboard for dehooking and/or disentanglement must be handled in a manner to minimize injury and promote post-hooking survival.

(i) When practicable, comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in paragraphs (b)(5) and (b)(6) of this section.

(ii) If a sea turtle is too large or hooked in such a manner as to preclude safe boarding without causing further damage/injury to the turtle, line clippers described in paragraph (b)(2) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

(iii) If a sea turtle is observed to be hooked or entangled by longline gear during hauling operations, the vessel operator must immediately cease hauling operations until the turtle has been removed from the longline gear or brought on board the vessel.

(iv) Hooks must be removed from sea turtles as quickly and carefully as possible. If a hook cannot be removed from a turtle, the line must be cut as close to the hook as possible.

(5) If the sea turtle brought aboard appears dead or comatose, the sea turtle must be placed on its belly (on the bottom shell or plastron) so that the turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. A reflex test, performed by gently touching the eye and pinching the tail of a sea turtle, must be administered by a vessel operator, at least every 3 hours, to determine if the sea turtle is responsive. Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance may be placed into a container holding water. A water-soaked towel placed over the eyes, carapace, and flippers is the most effective method to keep a turtle moist. Those that revive and become active must be returned to the sea in the manner described in paragraph (b)(6) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (b)(6)(i) of this section.

(6) Live turtles must be returned to the sea after handling in accordance with the requirements of paragraphs (b)(4) and (b)(5) of this section:

(i) By putting the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped, and releasing the turtle away from deployed gear; and

(ii) Observing that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(7) In addition to the requirements in paragraphs (b) and (c) of this section, a vessel operator shall perform sea turtle handling and resuscitation techniques consistent with 50 CFR 223.206(d)(1), as appropriate.

(c) *Longline Seabird mitigation measures.* (1) Seabird mitigation techniques. Owners and operators of vessels registered for use of longline gear must ensure that the following actions are taken when fishing north of 23° N. lat.:

(i) Employ a line setting machine or line shooter to set the main longline when making deep sets west of 150° W. long. using monofilament main longline;

(ii) Attach a weight of at least 45 g to each branch line within 1 m of the hook when making deep sets using monofilament main longline;

(iii) When using basket-style longline gear, ensure that the main longline is deployed slack to maximize its sink rate;

(2) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS;

(3) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel;

(4) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled;

(5) Retain sufficient quantities of fish, fish parts, or spent bait, between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (a)(6) of this section;

(6) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (c)(4) of this section; and

(7) Remove the bill and liver of any swordfish that is caught, sever its head from the trunk and cut it in half vertically, and periodically discharge the butchered heads and livers in accordance with paragraph (a)(6) of this section.

(8) If a short-tailed albatross is hooked or entangled by a vessel registered for use of longline gear, owners and operators must ensure that the following actions are taken:

(i) Stop the vessel to reduce the tension on the line and bring the bird on board the vessel using a dip net;

(ii) Cover the bird with a towel to protect its feathers from oils or damage while being handled;

(iii) Remove any entangled lines from the bird;

(iv) Determine if the bird is alive or dead.

(A) If dead, freeze the bird immediately with an identification tag attached directly to the specimen listing the species, location and date of mortality, and band number if the bird has a leg band. Attach a duplicate identification tag to the bag or container holding the bird. Any leg bands present must remain on the bird. Contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop, inform them that you have a dead short-tailed albatross on board, and submit the bird to NMFS within 72 hours following completion of the fishing trip.

(B) If alive, handle the bird in accordance with paragraphs (c)(9) through (c)(14) of this section.

(9) Place the bird in a safe enclosed place;

(10) Immediately contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

(11) Follow the veterinary guidance regarding the handling and release of the bird.

(12) Complete the short-tailed albatross recovery data form issued by NMFS.

(13) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(17)(iv) and (v) of this section, and release the bird only if it meets the following criteria:

(i) Able to hold its head erect and respond to noise and motion stimuli;

(ii) Able to breathe without noise;

(iii) Capable of flapping and retracting both wings to normal folded position on its back;

(iv) Able to stand on both feet with toes pointed forward; and

(v) Feathers are dry.

(14) If released under paragraph (c)(13) of this section or under the guidance of a veterinarian, all released birds must be placed on the sea surface.

(15) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water.

(16) Complete the short-tailed albatross recovery data form issued by NMFS.

(17) If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use of longline gear, owners and operators must ensure that the following actions are taken:

(i) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(ii) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(iii) Remove any entangled lines from the seabird;

(iv) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(v) Cut the fishing line as close as possible to ingested or inaccessible hooks;

(vi) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(vii) After recovered, release seabirds by placing them on the sea surface.

(d) *Vessel monitoring system.*

(1) Only a VMS unit owned by NMFS and installed by NMFS complies with the requirement of this subpart.

(2) After the holder of a permit to use longline gear has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(3) A longline permit holder will not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(4) The holder of a longline permit and the master of the vessel operating under the permit must:

(i) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(ii) Carry the VMS unit on board whenever the vessel is at sea.

(iii) Not remove or relocate the VMS unit without prior approval from the SAC.

(5) The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

(e) *Protected species workshop.* (1) Each year both the owner and the operator of a vessel registered for use of longline gear 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.

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

(3) An owner of a vessel registered for use of longline gear must have on file a valid protected species workshop certificate or copy issued by NMFS in order to maintain or renew their vessel registration.

(4) An operator of a vessel registered for use of longline gear must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

(f) An operator of a vessel registered for use of longline gear must notify the Regional Administrator at least 24 hours prior to embarking on a fishing trip regardless of the intended area of fishing.

(g) An operator of a vessel registered for use of longline gear in waters east of 150° W. long. and beyond the EEZ is subject to the requirements at 50 CFR part 223.

§ 660.713 Drift gillnet fishery.

(a) *Take Reduction Plan gear restrictions.* Gear restrictions resulting from the Pacific Offshore Cetacean Take Reduction Plan established under the authority of the Marine Mammal Protection Act of 1972 can be found at 50 CFR 229.31.

(b) *Other gear restrictions.* (1) The maximum length of a drift gillnet on board a vessel shall not exceed 6,000 ft (1828 m).

(2) Up to 1,500 ft (457 m) of drift gillnet in separate panels of 600 ft (182.88 m) may be on board the vessel in a storage area.

(c) *Protected Resource Area closures.* (1) Pacific leatherback conservation area. No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed:

(i) Pt. Sur at 36° 18.5′ N. lat., to

(ii) 34° 27′ N. lat. 123° 35′ W. long., to

(iii) 34° 27′ N. lat. 129° W. long., to

(iv) 45° N. lat. 129° W. long., thence to

(v) the point where 45° N. lat. intersects the Oregon coast.

(2) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Nino event off the coast of southern California.

(i) The Assistant Administrator will publish a notification in the **Federal Register** that an El Nino event is occurring off, or is forecast for off, the coast of southern California and the requirement for time area closures in the Pacific loggerhead conservation zone. The notification will also be announced in summary form by other methods as the Assistant Administrator determines necessary and appropriate to provide notice to the California/Oregon drift gillnet fishery.

(ii) The Assistant Administrator will rely on information developed by NOAA offices that monitor El Nino events, such as NOAA's Coast Watch program, and developed by the State of California, to determine if such a notice should be published. The requirement for the area closures from January 1 through January 31 and from August 15 through August 31 will remain effective until the Assistant Administrator issues a notice that the El Nino event is no longer occurring.

(d) *Mainland area closures.* The following areas off the Pacific coast are closed to driftnet gear:

(1) Within the U.S. EEZ from the United States-Mexico International Boundary to the California-Oregon border from February 1 through April 30.

(2) In the portion of the U.S. EEZ within 75 nautical miles from the mainland shore from the United States-Mexico International Boundary to the California-Oregon border from May 1 through August 14.

(3) In the portion of the U.S. EEZ within 25 nautical miles of the coastline from December 15 through January 31 of the following year from the United States-Mexico International Boundary to the California-Oregon border.

(4) In the portion of the U.S. EEZ from August 15 through September 30 within the area bounded by line extending from Dana Point to Church Rock on Santa Catalina Island, to Point La Jolla, CA.

(5) In the portion of the U.S. EEZ within 12 nautical miles from the mainland shore north of a line extending west of Point Arguello, CA, to the California-Oregon border.

(6) In the portion of the U.S. EEZ within the area bounded by a line from the lighthouse at Point Reyes to Noonday Rock, to Southeast Farallon Island to Pillar Point, CA.

(7) In the portion of the U.S. EEZ off the Oregon coast east of a line approximating 1000 fathoms as defined by the following coordinates:

42° 00′ 00″ N. lat. 125° 10′ 30″ W. long.
42° 25′ 39″ N. lat. 124° 59′ 09″ W. long.
42° 30′ 42″ N. lat. 125° 00′ 46″ W. long.
42° 30′ 23″ N. lat. 125° 04′ 14″ W. long.
43° 02′ 56″ N. lat. 125° 06′ 57″ W. long.
43° 01′ 29″ N. lat. 125° 10′ 55″ W. long.
43° 50′ 11″ N. lat. 125° 19′ 14″ W. long.
44° 03′ 23″ N. lat. 125° 12′ 22″ W. long.
45° 00′ 06″ N. lat. 125° 16′ 42″ W. long.
45° 25′ 27″ N. lat. 125° 16′ 29″ W. long.
45° 45′ 37″ N. lat. 125° 15′ 19″ W. long.
46° 04′ 45″ N. lat. 125° 24′ 41″ W. long.
46° 16′ 00″ N. lat. 125° 20′ 32″ W. long.

(8) In the portion of the U.S. EEZ north of 46° 16′ N. latitude (Washington coast).

(e) *Channel Islands area closures.* The following areas off the Channel Islands are closed to driftnet gear:

(1) *San Miguel Island closures.* (i) Within the portion of the U.S. EEZ north of San Miguel Island between a line extending 6 nautical miles west of Point Bennett, CA, and a line extending 6 nautical miles east of Cardwell Point, CA.

(ii) Within the portion of the U.S. EEZ south of San Miguel Island between a line extending 10 nautical miles west of Point Bennett, CA, and a line extending 10 nautical miles east of Cardwell Point, CA.

(2) *Santa Rosa Island closure.* Within the portion of the U.S. EEZ north of San Miguel Island between a line extending 6 nautical miles west from Sandy Point, CA, and a line extending 6 nautical miles east of Skunk Point, CA, from May 1 through July 31.

(3) *San Nicolas Island closure.* In the portion of the U.S. EEZ within a radius of 10 nautical miles of 33° 16′ 41″ N. lat., 119° 34′ 39″ W. long. (west end) from May 1 through July 31.

(4) *San Clemente Island closure.* In the portion of the U.S. EEZ within 6 nautical miles of the coastline on the easterly side of San Clemente Island within a line extending 6 nautical miles west from 33° 02′ 16″ N. lat., 118° 35′ 27″ W. long. and a line extending 6 nautical miles east from the light at Pyramid Head, CA.

§ 660.714 Purse seine fishery. [Reserved]

§ 660.715 Harpoon fishery. [Reserved]

§ 660.716 Surface hook-and-line fishery. [Reserved]

§ 660.717 Framework for revising regulations.

(a) *General.* NMFS will establish and adjust specifications and management measures in accordance with procedures and standards in the FMP.

(b) *Annual actions.* Annual specifications are developed and implemented according to § 660.709.

(c) *Routine management measures.* Consistent with section 3.4 of the FMP, management measures designated as routine may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register**.

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework measures in section 8.3.4 of the FMP and will be published in the **Federal Register**.

§ 660.718 Exempted fishing.

(a) In the interest of developing an efficient and productive fishery for HMS, the Regional Administrator may issue exempted fishing permits (EFP) for the harvest of HMS that otherwise would be prohibited.

(b) No exempted fishing for HMS may be conducted unless authorized by an EFP issued for the participating vessel in accordance with the criteria and procedures specified in 50 CFR 600.745.

§ 660.719 Scientific observers.

(a) All fishing vessels with permits issued under this subpart and operating in HMS fisheries, including catcher/processors, at-sea processors, and vessels that embark from a port in Washington, Oregon, or California and land catch in another area, may be required to accommodate an NMFS certified observer on board to collect scientific data.

(b) All vessels with observers on board must comply with the safety regulations at 50 CFR 600.746.

(c) NMFS shall advise the permit holder or the designated agent of any observer requirement in response to any pre-trip notification in this subpart.

(d) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart or as a condition of an EFP

issued under 50 CFR 660.718, the vessel may not engage in the fishery without taking the observer.

(e) A permit holder must accommodate a NMFS observer assigned under this section. The Regional Administrator's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or sea bird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel.

§ 660.720 Interim protection for sea turtles.

(a) Until the effective date of §§ 660.707 and 660.712 (d) and (e), it is unlawful for any person who is not operating under a Hawaii longline limited access permit under § 660.21(b) to do any of the following:

(1) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed on the high seas of the Pacific Ocean west of 150° W. long. and north of the equator (0° lat.).

(2) Possess a light stick on board a longline vessel on the high seas of the Pacific Ocean west of 150° W. long. north of the equator. A light stick as used in this paragraph is any type of light emitting device, including any fluorescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(3) An operator of a longline vessel subject to this section may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing west of 150° W. long. and north of the equator (0° N. lat.).

(4) Fail to employ basket-style longline gear such that the mainline is deployed slack when fishing on the high seas of the Pacific Ocean west of 150° W. long. north of the equator.

(5) When a conventional monofilament longline is deployed by a vessel subject to this section, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing in waters west of 150° W. long. north of the equator.

(6) Longline gear deployed by a vessel subject to this section must be deployed such that the deepest point of the main longline between any two floats, *i.e.*, the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(b) [Reserved]

[FR Doc. 04–7247 Filed 4–6–04; 8:45 am]

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Federal Register

Wednesday,
April 7, 2004

Part III

The President

Proclamation 7765—Cancer Control Month, 2004

Proclamation 7766—National Child Abuse Prevention Month, 2004

Proclamation 7767—Education and Sharing Day, U.S.A., 2004

Federal Register
Vol. 69, No. 67
Wednesday, April 7, 2004

Presidential Documents

Title 3—

The President

Proclamation 7765 of April 2, 2004

Cancer Control Month, 2004

By the President of the United States of America

A Proclamation

We have made dramatic progress in our fight against cancer, yet this disease continues to be the second-leading cause of death in the United States. Cancer Control Month provides the opportunity for Americans to learn vital information about cancer prevention, detection, and treatment.

Medical science is helping cancer victims live healthier, longer lives. Survival rates are rising, and today our country has more than 9 million cancer survivors. However, much work remains to be done. Researchers estimate that more than 1.3 million people in the United States will be diagnosed with cancer this year, and more than 800,000 will die from the disease.

A good diet, regular exercise, and healthy choices help people reduce their risk of developing many chronic diseases, including cancer. Research suggests that being overweight or obese accounts for 14 percent of cancer deaths among men and 20 percent among women.

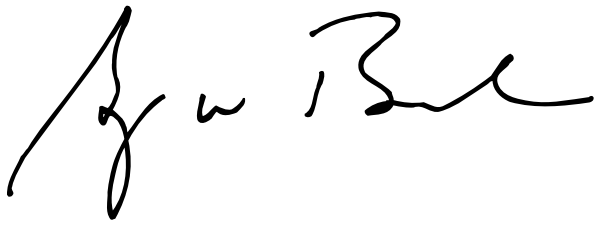
Regular check-ups are also important in the fight against cancer. Preventive health screenings can detect many forms of cancer at earlier, less dangerous stages, allowing doctors to stop cancer before it spreads. I encourage all Americans to talk to their doctors about preventive screenings and regular check-ups.

As we observe Cancer Control Month, I commend cancer survivors for their courage and determination. I applaud medical professionals, researchers, family members, and friends for their efforts to improve the lives of those suffering from cancer and for their work in finding a cure for this devastating disease. I encourage all Americans to learn more about cancer. By working together, we can save lives and win the fight against cancer.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 103) as amended, requesting the President to issue an annual proclamation declaring April as "Cancer Control Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim April 2004 as Cancer Control Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that will increase awareness of what Americans can do to prevent and control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–8040
Filed 4–6–04; 8:58 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7766 of April 2, 2004

National Child Abuse Prevention Month, 2004

By the President of the United States of America

A Proclamation

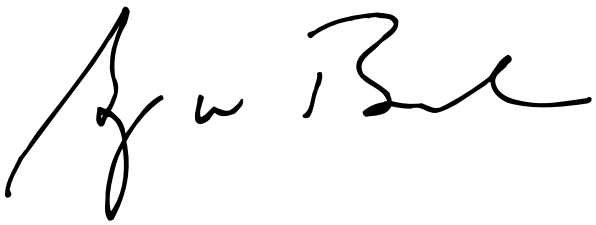
America has a fundamental duty to protect the safety and well-being of its children. During National Child Abuse Prevention Month, we renew our commitment to preventing child abuse and neglect, and we dedicate ourselves to creating a safe environment in which our children can grow and thrive.

We have made important progress in protecting America's children, but too many still suffer from abuse and neglect. Recent reports indicate that nearly 900,000 children were found to be victims of abuse or neglect in 2002. Of these children, an estimated 1,400 died, 75 percent of whom were 4 years old or younger.

These young girls and boys depend on adults to recognize the risk factors and warning signs of abuse and to take action to end it. This critical responsibility is shared by parents, teachers, coaches, religious leaders, government officials, and concerned citizens in every community.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2004 as National Child Abuse Prevention Month. I encourage all citizens to take an active role in creating a caring community and help protect America's children from abuse and neglect.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



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Presidential Documents

Proclamation 7767 of April 2, 2004

Education and Sharing Day, U.S.A., 2004

By the President of the United States of America

A Proclamation

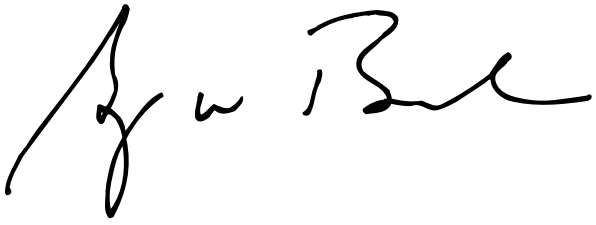
On Education and Sharing Day, U.S.A., we recognize the importance of teaching children good character and values. Families, schools, and religious congregations help instill in our children the enduring values of courage, compassion, integrity, and respect for differences of faith and race. By building the mind and character of every child in America, we encourage our children to make the right choices, and we create a future of promise and opportunity for all.

As we promote good character, we must also advance excellence in education and set high standards for all of our students. By raising expectations, insisting on results, and challenging failure, we strengthen our schools and create an environment where every student can succeed.

To help America's young people make the right choices, we need to provide them with good examples. Strong role models help children build confidence, gain knowledge, and develop good character. For the past 20 years, this day has honored Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe. He helped establish education and outreach centers, offering social service programs and humanitarian aid worldwide. After his death in 1994, the Rebbe received the Congressional Gold Medal for his "outstanding and lasting contributions toward improvements in world education, morality, and acts of charity.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2, 2004, as Education and Sharing Day, U.S.A. I call upon all Americans to strengthen our Nation by teaching our children about the culture of responsibility and citizenship.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



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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.

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Transportation of animals on foreign air carriers; published 10-10-03

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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Fish and Wildlife Service

Endangered and threatened species:

Florida manatee; protection areas—

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Animal and Plant Health Inspection Service

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ENERGY DEPARTMENT

Federal Energy Regulatory Commission

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Texas; comments due by 4-12-04; published 3-11-04 [FR 04-05511]

Virginia; comments due by 4-14-04; published 3-15-04 [FR 04-05637]

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Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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Fish and Wildlife Service

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Endangered Species Act:

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Migratory bird hunting:

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Surface Mining Reclamation and Enforcement Office

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 254/P.L. 108–215

To authorize the President of the United States to agree to certain amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the establishment of a Border Environment Cooperation Commission and a North American Development Bank, and for other purposes. (Apr. 5, 2004; 118 Stat. 579)

H.R. 3926/P.L. 108–216

Organ Donation and Recovery Improvement Act (Apr. 5, 2004; 118 Stat. 584)

H.R. 4062/P.L. 108–217

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through June 4, 2004, and for other purposes. (Apr. 5, 2004; 118 Stat. 591)

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