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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

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB76

Common Crop Insurance Regulations; Blueberry Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Blueberry Crop Insurance Provisions to convert the blueberry pilot program to a permanent crop insurance program. The changes will apply for the 2005 and succeeding crop years.

DATES: Effective August 30, 2004.

FOR FURTHER INFORMATION CONTACT: For further information, contact William Klein, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the collections of information in this rule have been approved by the OMB under control number 0563–0053 through February 28, 2005.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, or notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On July 30, 2003, FCIC published a notice of proposed rulemaking in the **Federal Register** at 68 FR 44668–44672 to amend the Common Crop Insurance Regulations; Blueberry Crop Insurance Provisions, to convert the blueberry pilot program to a permanent program, effective for the 2005 and succeeding crop years for all states and counties with blueberry crop insurance.

Following publication of the proposed rule on July 30, 2003, the public was afforded 60 days to submit written comments and opinions. FCIC received 61 comments from reinsured companies, a trade organization, a producer, and FCIC Regional Offices. The comments received from the

proposed rule are addressed in this final rule and FCIC's responses are as follows:

Comment: Two commenters asked about FCIC's plans for expansion of the blueberry program due to the change in status from a pilot to a permanent program. One commenter specifically noted that pilot program coverage is generally limited with respect to the areas where insurance is offered.

Response: Pilot programs are eligible for expansion when they are converted to a permanent program. FCIC expanded the blueberry program to additional states and counties for the 2004 crop year based on expansion requests and supporting data. FCIC will continue to review county expansion requests and such expansion may be approved if sufficient actuarial data exists.

Comment: One commenter expressed concern that the formula used to establish coverage under this plan allows and even stimulates cheating by farmers and will not be subject to close enough scrutiny to keep farmers honest. They further maintain the program design may allow insureds to cheat and that FCIC's saying there is a ''guarantee'' in farming is ridiculous.

Response: FCIC disagrees with the commenter. A producer's blueberry production guarantee is based on a producer's individual yields and is established in a manner consistent with other actual production history crop programs. While there is always opportunity to falsify production records, commit fraud, *etc.,* the risk is no greater than with these other crop programs. The Risk Management Agency's (RMA) underwriting and loss adjustment standards are designed to mitigate waste, fraud, and abuse. Further, insurance providers are supposed to monitor their policies and report to RMA any suspected fraud, waste, or abuse. RMA's Compliance Division is also responsible for investigating waste, fraud, and abuse. When waste, fraud, or abuse is found, individuals are prosecuted to the maximum extent under the law.

Comment: One commenter recommended modifying a current Special Provisions statement that attaches to section 10(d) (previously section 10(c)(3)) of the Blueberry Crop Insurance Provisions. These provisions address the quality adjustment of mature blueberries, harvested or unharvested, that are damaged by an insurable cause of loss to the extent they can not be sold as fresh or processed blueberries. The Special Provisions statement specifies the percent of damage required before the value of blueberries is reduced through a formula. The commenter took exception with the percent of damage threshold currently shown on the Special Provisions for their area. They believe it is too low, and should be increased for the next crop year.

Response: The percent of damage threshold for mature damaged blueberries is contained in the Special Provisions rather than the Crop Provisions to address different blueberry types and variable marketability of damaged blueberries in different parts of the country. RMA's Regional Offices (RO) establish the threshold percentage for their region based on marketability and type of mature damaged blueberries. If data is available demonstrating the percentage threshold needs to be changed for a county or group of counties, the applicable RO has the authority to change it.

Comment: One commenter expressed concern with the adequacy of the definition ''unsound blueberries.'' They believe the determinations of undersized, immature, mechanically damaged blueberries, etc. may be left up solely to the buyer or processor. What may be unsound berries due to size at one processor may be acceptable at another processor. The definition does not establish a minimum standard by which all production is measured, such as U.S. No. 1 or U.S. No. 1 processing. Furthermore, they believe a change in the definition of ''unsound blueberries'' could also affect the definitions of ''blueberry production'' and ''dry line.''

Response: FCIC agrees with the commenter and has removed the definitions ''blueberry production,'' ''dry line,'' ''mechanical damage,'' and ''unsound blueberries.'' FCIC has added the definitions of ''damaged blueberries'' and ''mature blueberry production'' and has incorporated part of the definition of ''unsound blueberries'' into the definition of ''damaged blueberries.'' The definitions of both ''mature blueberry production'' and ''damaged blueberries'' incorporates the United States Standards for Grades of Blueberries, U.S. No.1, or such other grading standards contained in the Special Provisions. This permits FCIC to distinguish between the handling of the blueberries appraised and harvested in section 10(c) from those appraised and harvested in section 10(d). The modification also makes it no longer necessary to define ''dry-line.'' The additional provisions provide uniform guidelines for determining quality adjustment.

Comment: One commenter took exception with defects listed in the definition of ''unsound blueberries'' that specifically include ''undersized'' and ''mechanically damaged.'' The commenter pointed out other perennial policies such as apples and plums do not insure against damage due solely to the fruit being undersized. They also questioned what criteria would be used in determining acceptable size when appraising the field. Furthermore, they noted no other policy provisions cover man-made damage due to a cause such as mechanical damage. The stated intent of the Federal Crop Insurance Act is to compensate producers for natural disasters.

Response: FCIC agrees with the commenter and has removed the definitions ''unsound blueberries'' and ''mechanical damage'', and removed the related definition ''blueberry production.'' FCIC has also addressed the commenter's concerns by adding definitions of ''damaged blueberries'' and ''mature blueberry production.'' As stated above, the definitions incorporate the United States Standards for Grades of Blueberries, U.S. No. 1, or other appropriate grading standards used in determining blueberry production. Further, the definition of ''damaged blueberries'' makes it clear that such damage must be due to an insurable cause of loss.

Comment: One commenter suggested RMA define the terms ''marketable'' and ''damage.''

Response: FCIC agrees with the commenter and has addressed the commenter's concern by adding new definitions for ''damaged blueberries.'' However, FCIC has removed the term ''marketable'' from the policy and replaced it with the term ''mature'' and has defined that term. As stated above, this was necessary to distinguish between the treatment of blueberries appraised and harvested under section 10(c) from those damaged blueberries appraised and harvested under section 10(d).

Comment: One commenter asked for clarification that section 3(d) meant one coverage level per county when, for example, a producer has blueberry insurance in two counties.

Response: The Basic Provisions make it clear that coverage levels are selected on a county basis and that different coverage levels can be selected for different counties.

Comment: Two commenters recommended that section 3(d), which requires the producer or agent to provide notification when it is evident a cause of loss that could or would reduce the yield of the insured crop is known prior to the request to increase coverage, be removed from these Crop Provisions until this issue is addressed

in the Basic Provisions, because of the applicability to all crops.

Response: FCIC agrees with the commenter. If FCIC is to adopt this change, the most appropriate place would be the Basic Provisions, because it would apply to all crops.

Comment: Two commenters recommended the burden in section 3(d) be on FCIC, not on the producer, agent, or company as to when a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time the increase is requested.

Response: As stated above, FCIC has decided not to adopt this change in this rule.

Comment: Three commenters recommended changes in section 7(a)(1) that specify the number of days the company has to inspect the acreage and notify the insured they are denying coverage before the coverage automatically attaches. The previous time frame was 10 days and the proposed rule calls for 20 days. Two commenters stated their preference is for 30 days, pointing out this would allow sufficient time for inspections and would be consistent with the nursery policy and other perennial crop policies such as Florida Fruit Trees. The third commenter suggested going back to 10 days because this is consistent with other perennial fruit crop policies with a similar insurance attachment such as apples, cranberries, etc. They further noted extending the available time period upon which an insurance provider may inspect acreage to deny coverage on new applications without making the same changes in similar perennial fruit policies creates administrative conflicts for delivery and service systems.

Response: FCIC disagrees with the commenters and believes a 20-day time frame is the most appropriate deadline to allow for inspection and possible denial of coverage. Prior to publishing the proposed rule, producers and company personnel agreed 10 days was not an adequate amount of time to conduct an inspection. Further, producers believed 30 days was too long to wait for confirmation of coverage. They agreed 20 days was an acceptable compromise. As the other perennial fruit policies such as apples, cranberries *etc.*, are revised, FCIC will evaluate whether a change to a 20-day time frame for inspection and possible denial of insurance is appropriate. Therefore, no change has been made.

Comment: One commenter suggested rearranging the language in section 7(a)(2) from ''For each crop year subsequent to the year of application, that the policy * * *'' to ''For each subsequent crop year that * * *'' They believe this would make the language clearer.

Response: FCIC agrees and has revised the provision.

Comment: Two commenters recommended revising section 8(a)(2) to clarify fire is an insured cause of loss only when due to natural causes, consistent with the Federal Crop Insurance Act and the Crop Insurance Handbook. The language in the Proposed Rule reads, ''Fire, unless weeds and other forms of undergrowth have not been controlled * * * *etc.*''

Response: The suggested change is not required and could lead to confusion regarding whether the other causes of loss must also be due to natural causes. FCIC clarified this issue in the Basic Provisions, which now require causes of loss be due to naturally occurring events.

Comment: One commenter recommended removing the text after ''mechanical damage'' in section 8(b)(4). The text reads ''Mechanical damage in excess of that normally experienced for mechanically harvested blueberries for the current crop year.''

Response: FCIC agrees with the commenter and has removed the text after the words ''mechanical damage,'' which remains as an excluded cause of loss in section 8(b)(4). FCIC does not have the authority to pay losses due to mechanical damage.

Comment: One commenter questioned why sections 9(a)(1) through (3) require notification ''within'' the specified time period, while the provisions in sections 9(a)(4) and (5) require notification ''at least 15 days'' before the specified action.

Response: The difference between sections 9(a)(1) through (3) and 9(a)(4) and (5) is that sections 9(a)(1) through (3) deal with notice after a potential loss has occurred and immediate notice is required. Sections 9(a)(4) and (5) are intended to provide greater flexibility by providing the last day that such notice must be provided to allow sufficient time for an inspection. To make the provisions clearer, FCIC has modified the provisions under both section 9(a)(2) and 9(a)(3). The 24-hour notification provisions are now contained in sections 9(a)(2)(i) through (iv). Sections 9(a)(4) and (5), are renumbered as sections 9(a)(3) and (4), and contain reporting requirements of ''at least'' 15 days notice.

Comment: One commenter questioned the meaning of the provisions in section 9(a)(1), which provide the insured must notify us ''Within 3 days of the date harvest should have started if the crop will not be harvested.'' They asked if this meant 3 days before or three days after the date harvest should have started.

Response: The provisions were intended to provide a window for the producer to report, either three days before, or not later than three days after harvest should have begun. The window gives the producer time to make a decision as to whether or not to harvest the crop and the company sufficient time to conduct needed appraisals.

Comment: One commenter asserted that the ''within 24 hours'' of ''any cause of loss'' notification requirement contained in section 9(a)(2) and (3) may be difficult for an insured to meet. They noted some causes of loss might not be so time-specific that the insured can identify the surrounding 24-hour period.

Response: The 24-hour time frame is required so the company can inspect the crop and is due, in part, to the perishable nature of the crop. FCIC agrees that producers may have difficulty identifying the 24-hour period after some causes of loss such as drought. However, FCIC believes in most cases the insured knows when a cause of loss occurred and should be able to meet the deadline. In those cases, such as drought, establishing a different time frame would not eliminate the problem and reasonableness of the notice must be taken into consideration.

Comment: One commenter suggested section 9(a)(2) is unclear, and even misleading. They believe it could be read in such a way that the 24-hour notification could relate to both the occurrence of a cause of loss and to when the blueberries are mature and ready for harvest. They noted maturity does not occur for all blueberries at the same time, and questioned why notification would be necessary to the company, so they could inspect the acreage, if there is no damage.

Response: FCIC has revised the provision to require 24-hour notice if a cause of loss occurs when blueberries are mature and ready for harvest. If no cause of loss has occurred, notice is not required.

Comment: One commenter questioned whether section 9(a)(2) should also contain the language ''* * * and you do not intend to complete harvest on the crop * * *'' that is contained in section 9(a)(3).

Response: FCIC determined that the 24-hour notice is required if a cause of loss occurs during harvest regardless of whether the producer intends to harvest the crop. Therefore, FCIC has removed the language regarding the intent to

complete harvest from the new combined section 9(a)(2).

Comment: One commenter noted that in looking at section 9(a)(1) through (5), all but one ends with the phrase ''so we can inspect the insured acreage,'' or ''so we can inspect the insured production.'' They suggested that FCIC consider incorporating a phrase of this nature in 9(a) rather than repeating the concept in 9(a)(1) through (5).

Response: After FCIC has combined and redrafted this section to remove ambiguity, it determined that the reference to the ability to inspect the acreage is no longer necessary. The provision now clearly and cleanly states when notice is required.

Comment: One commenter questioned what the premium rate impact would be, in order to cover the additional amount of indemnities that will be incurred for allowances for quality adjustment. They noted quality adjustment would be for all causes of loss. Since the blueberries will be codified as a permanent program, quality adjustment will apply to all currently insured areas and to any expansion counties.

Response: When quality adjustment provisions were added to the program for the 2001 crop year, they applied to mature blueberries damaged by hail and freeze, and premium rates were increased to cover those perils. This rule adds quality provisions for all insured causes of loss and for all States and counties where the blueberry program is offered. To the extent that the risk of loss is increased by this change, premium rates will be adjusted to reflect this additional risk.

Comment: One commenter noted the 2004 crop year Special Provisions specify a threshold of 20 percent damage due to hail or freeze to mature blueberries as the basis for determining whether quality adjustment applies. The commenter believes this percentage needs to be increased because quality adjustment may now result from additional perils, including (as proposed) ''mechanical damage.''

Response: FCIC agrees with the commenter that the percentage shown on the Special Provisions needs to be reviewed. For crop year 2005, FCIC will examine the effect of adding these additional causes of loss for quality adjustment to determine the new thresholds. In any case, if additional risk results from these added perils, premium will be adjusted to cover these risks. In addition, as stated above, FCIC has clarified that mechanical damage is an uninsured cause of loss. FCIC has also clarified the criteria for determining damage or loss by providing grade standards.

Comment: One commenter expressed concern that as written in the proposed rule, section 10(c)(3) appears to give the insured wiggle room to argue that because they are a fresh blueberry producer who could not sell their production as fresh, no production should be counted, even though the production might have been sold for processing.

Response: FCIC agrees the proposed rule language contained in section 10(c)(3) could have been misinterpreted and perhaps allowed for not counting fresh production sold as processing. Consequently, the provisions have been modified and renumbered as sections 10(d)(1) and (2). The revised provisions now set two standards, one for damaged blueberries where the percent of damaged blueberries exceeds the amount stated on the Special Provisions and one where the percent of damaged blueberries does not exceed the amount stated on the Special Provisions. Where the percent of damaged blueberries exceeds the amount stated on the Special Provisions, no blueberries from the acreage will count as production to count unless sold. If sold, production to count will be determined by dividing the price received for the damaged blueberries by the applicable price election and multiply the resulting factor by the pounds sold. Typically there is little or no juice market, or other processing market, for damaged blueberries that would normally be sold as fresh blueberries. However, if a processing market is found and damaged blueberries are harvested and sold, production to count will be based on value as determined above. Where the percent of damaged blueberries does not exceed the amount stated on the Special Provisions, all mature (undamaged) blueberries will be counted as production to count.

Comment: One commenter noted a discrepancy between the provisions contained in section 10(c)(3) and 10(c)(3)(ii). Language contained in 10(c)(3) states in part ''* * * damaged by an insurable cause of loss * * * to the extent the blueberries cannot be sold as fresh or processed blueberries * * *,'' while section 10(c)(3)(ii) references damaged blueberries that are sold. The commenter maintains it could be argued that section10(c)(3)(ii) would never apply because of provisions contained in section 10(c)(3) regarding blueberries that cannot be sold as fresh or processing due to the percent of damage.

Response: FCIC has revised the proposed provisions contained in section 10(c)(3) and renumbered them as section 10(d) and 10(d)(1) and (2). As stated above, the revised provisions now clearly differentiate between the treatments of damaged blueberries where the percent of damaged blueberries does not exceed the amount stated on the Special Provisions and where the percent of damaged blueberries does exceed the amount stated on the Special Provisions. Further, the provisions are clarified to include the effect if damaged blueberries are sold.

Comment: One commenter expressed concern about the addition of quality adjustment for all causes of loss shown in section 8 of these Crop Provisions. They noted some crops such as apples provide for a quality feature for limited perils such as hail and freeze, which are readily identifiable. They questioned, for instance, whether an adjuster could readily identify damage due to adverse weather such as excessive heat and sunburn that may cause the blueberries to color poorly or cause other forms of damage that might be difficult for the adjuster to determine, yet would not be accepted, based on quality, by the processor or buyer.

Response: FCIC has examined this issue and consulted with producers and their trade associations. To provide adequate protection, FCIC has decided to cover all perils. However, to assist loss adjusters, FCIC has incorporated grading standards that are used to determine whether production has been damaged.

In addition to the changes described above, FCIC has made the following changes:

1. Modified the provisions in section 2 by making it clear that the enterprise, whole-farm, and optional unit provisions in the Basic Provisions are not applicable. This does not eliminate the applicability of other optional units.

2. Added the word ''percentage'' after price election in the first line of section 3, to allow producers to select different price elections, if different price elections were offered for different types. Clarifies that it is the percentage of the price election that must be the same.

3. Added provisions to section 6(a)(2)(i), to allow insurance of cultivars which were initially experimental, but have since become commercially acceptable and available.

4. Added provisions to section 6(b) that allow the flexibility to specify other types of blueberries that need pruning every other year, if necessary, in the Special Provisions.

5. Added provisions to section 7(a)(3) ''* * * unless specified otherwise in

the Special Provisions.'' This allows the calendar date for the end of the insurance period to be tailored through a Special Provisions statement for areas where a statewide date may be inappropriate for a specific type or county.

6. Modified the provisions in section 7(a)(4) to clarify that coverage may not begin for a crop year if we cancel or terminate a policy after insurance has attached but on or before the cancellation and termination dates, and no premium, administrative fee, or indemnity will be due.

7. Deleted in provisions in section 7(b)(2) ''* * * and the acreage was insured by you the previous year. * * * '' These provisions created confusion and could have the effect of obligating a new insured who relinquishes interest in an acreage shortly after insurance attaches (cancelled lease beginning the new calendar year) to pay premium but not be able to claim an indemnity on the acreage since an insurable interest no longer exists.

8. Added a new provision, 7(b)(3), to clarify the effect of relinquishing an insurable share after the acreage reporting date. Since this issue is not clearly addressed in section 7 of the Basic Provisions, these provisions are added to clarify that premium is still owed if an insurable share is relinquished after the acreage reporting date.

9. Deleted section 12 because blueberries are no longer a pilot program, so written agreements are available if permitted by the policy.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. Good cause to make a rule effective less than 30 days after publication in the **Federal Register** exists when the 30-day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this rule, it would be contrary to public interest to delay implementation because public interest is served by improving the insurance product as follows: (1) Added provisions to eliminate any lapse in insurance coverage between crop years, therefore, providing continuous coverage for insureds and providing an improved risk management product that prevents the need for ad hoc disaster payments; (2) added provisions to specify that if the insured policy is canceled or terminated for any crop year after insurance attached for that crop year, but on or before the cancellation and termination dates, whichever is later, then insurance will not be considered to have attached. This modifies the cancellation and termination provisions to coincide with continuous coverage, providing the greatest flexibility to insured producers to make insurance decisions prior to the next crop year, and providing an improved risk management product; (3) added provisions to clarify that an insurance provider may not cancel an insured's policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation and termination date, to protect insureds against companies canceling policies simply because a loss has occurred; (4) added quality adjustment provisions for determining production to count for mature blueberries, harvested or unharvested, that have been damaged to the extent the blueberries cannot be sold for fresh or processing, which provides improved risk management protection for insured producers; (5) provided simplification and clarity to the blueberry crop insurance program.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the 2006 crop year. This would mean the affected producers would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective less than 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 457

Crop insurance, Blueberry, Reporting and recordkeeping requirements.

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 2. Section 457.166 is added to read as follows:

§ 457.166 Blueberry crop insurance provisions.

The Blueberry Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Blueberry Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. *Definitions.*

Damaged blueberries. Blueberries ready to harvest that due to an insurable cause of loss as shown in section 8 of these Crop Provisions do not meet the United States Standards for Grades of Blueberries, U.S. No. 1, or such other applicable grading standards specified in the Special Provisions.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, or permitting the general public to enter the field for the purpose of picking the crop.

Harvest. Picking mature blueberries from the bushes either by hand or machine.

Mature blueberry production. Blueberries ready to harvest that meet or exceed the United States Standards for Grades of Blueberries, U.S. No. 1, or such other applicable grading standards contained in the Special Provisions.

Pound. Sixteen ounces avoirdupois.

Production guarantee (per acre). The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Prune. A cultural practice performed to increase blueberry production as follows:

(a) For lowbush blueberries, a process by which the acreage is either burned or mowed; and

(b) For all other blueberries, a process by which parts of the bush are cut off or the bush is cut back.

2. *Unit Division.*

The enterprise, whole-farm, and optional unit provisions in the Basic Provisions are not applicable, and blueberry acreage is limited to basic units as defined in section 1 of the Basic Provisions, unless otherwise specified in the Special Provisions.

3. *Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.*

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election percentage for each blueberry type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report (by type, if applicable) by the production reporting date designated in section 3 of the Basic Provisions:

(1) For all types of blueberries: any damage; removal of bushes; change in practices, or any other circumstance that may reduce the expected yield below the yield

upon which the insurance guarantee is based; and the number of affected acres; and

(2) For highbush and rabbiteye blueberry types:

(i) The number of bearing bushes on insurable and uninsurable acreage; and

(ii) The age of the bushes and the planting pattern.

(c) We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: Removal of bushes; damage to bushes; changes in practices; and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(d) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer for the next year if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time you request the increase.

4. *Contract Changes.*

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date.

5. *Cancellation and Termination Dates.*

(a) In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are November 20.

(b) If your blueberry policy is canceled or terminated by us for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will be considered to have not attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(c) We may not cancel your policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation date. However, your policy can be terminated if a cause for termination contained in sections 2 or 27 of the Basic Provisions exists.

6. *Insured Crop.*

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the blueberries in the county for which a premium rate is provided in the actuarial documents:

(1) In which you have a share;

(2) That are grown on bush varieties that:

(i) Were commercially available when the bushes were set out or have subsequently became commercially available; and

(ii) Are varieties adapted to the area of the following types:

(A) Highbush blueberries;

(B) Lowbush blueberries;

(C) Rabbiteye blueberries; or

(D) Other blueberry types listed on the Special Provisions.

(3) That are produced on bushes that have reached the minimum insurable age or have produced the minimum yield per acre designated in the Special Provisions; and

(4) That, if inspected, are considered acceptable by us.

(b) Lowbush blueberry plants (or other types as specified in the Special Provisions) must be pruned every other year to be eligible for insurance.

7. *Insurance Period.*

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application, coverage begins on November 21 of the calendar year prior to the year the insured crop normally blooms, except that, if your application is received by us after November 1, insurance will attach on the twentieth day after your properly completed application is received in our local office unless we inspect the acreage during the 20-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the blueberry acreage.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of insurance period for each crop year is September 30 for Michigan and September 15 for all other states, unless specified otherwise in the Special Provisions.

(4) Notwithstanding the provisions in this section, coverage may not begin for a crop year if the policy is cancelled or terminated in accordance with section 5(b).

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. There will be no coverage of any insurable interest acquired after the acreage reporting date.

(2) If you relinquish your insurable share on any insurable acreage of blueberries on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

(3) If you relinquish your insurable share on any insurable acreage of blueberries after the acreage reporting date for the crop year, insurance coverage will be provided for any loss due to an insurable cause of loss that occurred prior to the date that you relinquished your insurable share and the whole premium will be due for such acreage for that crop.

8. *Causes of Loss.*

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the unit;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Earthquake;

(6) Volcanic eruption;

(7) An insufficient number of chilling hours to effectively break dormancy;

(8) Wildlife, unless appropriate control measures have not been taken; and

(9) Failure of the irrigation water supply, if caused by a cause of loss specified in this section that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Failure to install and maintain a proper drainage system;

(2) Failure to harvest in a timely manner;

(3) Inability to market the blueberries for any reason other than actual physical damage to the blueberries from an insurable cause specified in this section (for example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production); or

(4) Mechanical damage.

9. *Duties In The Event of Damage or Loss.*

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us:

(1) Within 3 days of the date harvest should have started if the crop will not be harvested.

(2) Within 24 hours if any cause of loss occurs:

(i) Within 15 days of harvest;

(ii) When the blueberries are mature and ready for harvest; or

(iii) During harvest.

(3) At least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals and acceptable records provided by you will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count that is not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(4) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit as a result of previously reported damage, so that we may inspect the damaged production.

(b) You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet

the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

(c) You may be required to harvest a sample, selected by us, to be used for appraisal purposes.

10. *Settlement of Claim.*

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records for any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 10(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results in section 10(b)(2) if there is more than one type;

(4) Multiplying the total production to count for each blueberry type, if applicable, by the respective price election;

(5) Totaling the results in section 10(b)(4), if there is more than one type;

(6) Subtracting the result in section 10(b)(5) from the result in section 10(b)(3); and

(7) Multiplying the result in section 10(b)(6) by your share.

Example For Section 10(b).

You have 100 percent share in 25 acres of highbush blueberries with a production guarantee of 4,000 pounds per acre and a price election of $.45 per pound. You are only able to harvest 62,500 total pounds because adverse weather reduced the yield. Your indemnity would be calculated as follows:

A. 25 acres × 4,000 pound production guarantee/acre = 100,000 pound total production guarantee;
B. 100,000 pounds × $.45 price election = $45,000 guarantee;
C. One type only, so same as (2) above, $45,000;
D. 62,500 pounds production to count × $.45 price election = $28,125 value of production to count;
E. One type only, so same as (4) above, $28,125;
F. $45,000 − $28,125 = $16,875 loss; and
G. $16,875 × 100 percent share = $16,875 indemnity payment.

End of Example

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised blueberry production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 9;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records;

(ii) Production lost due to uninsured causes; and

(iii) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvest the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count.

(2) All harvested mature blueberry production from the insurable acreage.

(d) If you have harvested or unharvested damaged blueberries and the percent of damaged blueberries exceeds that shown in the Special Provisions for that type, production to count for the damaged unit or portion of a unit will be determined as follows:

(1) The blueberries from the specific acreage will not be considered production to count if no blueberries are harvested and sold from such acreage;

(2) For damaged blueberries that are harvested and sold, the production to count for such damaged blueberries will be determined by:

(i) Subtracting the harvest costs contained in the Special Provisions from the price received for the damaged blueberries;

(ii) Dividing the result in section 10(d)(2)(i) by the price election; and

(iii) Multiplying the resulting factor from section 10(d)(2)(ii), not less than zero, by the pounds of damaged blueberries;

(e) If you have harvested or unharvested damaged blueberries and the percent of damaged blueberries does not exceed that shown in the Special Provisions for that type, the production to count for the damaged unit or portion of a unit will be the appraised or harvested production of blueberries.

(f) If we determine that frost protection equipment, as shown on your accepted application, was not properly utilized, the indemnity for the affected acreage in the unit will be reduced by the percentage reduction allowed for frost protection equipment as specified in the Special Provisions. You must, at our request, provide us records by date for each period the frost protection equipment was used.

11. *Late and Prevented Planting.*

The late and prevented planting provisions in the Basic Provisions are not applicable.

Signed in Washington, DC, on August 19, 2004.

David C. Hatch,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–19447 Filed 8–23–04; 9:05 am]

BILLING CODE 3410–08–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB91

Common Crop Insurance Regulations, Pecan Revenue Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the proposal to add to 7 CFR part 457 a new § 457.167 that provides insurance for pecans. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions. The intended effect of this action is to convert the pecan revenue pilot crop insurance program to a permanent insurance program for the 2005 and succeeding crop years.

DATES: Effective August 30, 2004.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information in this rule have been approved by the OMB under control number 0563–0053 through February 28, 2005.

Government Paperwork Elimination Act (GPEA) Compliance

In an effort to comply with GPEA, FCIC requires all insurance companies delivering the crop insurance program to make available all insurance documents electronically and to transact business with insureds electronically. Further, to the maximum extent practicable, FCIC transacts its business with the insurance companies electronically.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On March 10, 2004, FCIC published a notice of proposed rulemaking in the **Federal Register** at 69 FR 11342–11346 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.167, Pecan Revenue Crop Insurance Provisions. FCIC intends to convert the pecan revenue pilot crop insurance program to a permanent crop insurance program beginning with the 2005 crop year. These provisions will replace and supersede the current unpublished provisions that insure pecans under a pilot program. The Pecan Revenue Crop Provisions will be effective for those insured whose first year of the two-year coverage module is 2005. If an insured's first year of the two-year coverage module is 2004 under the pilot program, the pilot policy will still be effective for the 2005 crop year. As with any policy changes, the new Crop Provisions would be applicable for the 2006 crop year if the policy remains in force and coverage will begin the day immediately following the end of the insurance period for the previous two-year coverage module.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data and opinions. The comments received from the proposed rule are addressed in this final rule and FCIC's responses are as follows:

Comment: A commenter questioned why the definition of ''acreage'' had been removed from the Crop Provisions and wondered if the definition would be in the Basic Provisions and would it provide the clarification that only ''the area occupied by the insured crop * * *.'' is counted for perennial crop purposes.

Response: Acreage for pecans are determined the same as all other crops, so a separate definition is not required.

Comment: A commenter suggested revising the definition of ''average gross sales per acre'' as the phrase ''during a crop year'' was not clear. It was also suggested the term ''gross sales'' be added in the definition as it is the basis for the average gross sales per acre.

Response: The definition of ''average gross sales per acre'' has been revised to add an example to clarify the crop year referred to and a separate definition of gross sales has been added for further clarification.

Comment: One comment suggested removing the phrase ''(in-shell basis)'' from the definition of ''approved average revenue per acre'' as it is already contained in another definition. It was also suggested to remove the last phrase ''* * * will be used to determine your total average gross sales per acre'' and the word ''have'' contained in the last sentence be replaced to ''provide'' as it is in the current Crop Provisions.

Response: FCIC agrees and has made the changes accordingly.

Comment: A commenter questioned if the change in the beginning and end dates for the definition of ''crop year'' means it is not necessary to refer to when the trees ''normally'' bloom.

Response: Since blooming normally occurs between April and August, it is no longer necessary to refer to the crop year in which the tree ''normally'' blooms.

Comment: A comment asked if the term ''mature'' should be added back to the definition of ''harvest'' as it is not considered harvested if the pecans are collected before they are ready.

Response: FCIC agrees and has made the change accordingly.

Comment: A commenter had questions regarding the definition of ''market price.'' The commenter asked who determines whether the actual price received and the average price per pound are inconsistent with AMS prices, and how much difference is to be considered. The commenter also asked if the AMS price is representative of the area and what date is used for appraisals

and how is the value calculated when there might be two appraisals when pecan acreage is harvested more than once.

Response: In an effort to avoid the difficulty in determining whether prices are inconsistent, FCIC has revised the definition to specify the market price is the greater of: (1) The average price per pound offered by buyers in the area; (2) the actual price received for any sold production; or (3) the average of the AMS prices published during that week for similar quality pecans. The AMS prices may be obtained daily and a weekly report is also available. The AMS prices are identified by area and also contain the quality by pecan variety for specific areas. The AMS prices may be found at *www.ams.usda.gov/marketnews.htm.* If multiple appraisals occur in the same week, the same average AMS price would be applicable. However, if appraisals occur in different weeks, different AMS prices would be used to value the production. Section 13(d) has been revised to take into consideration the different prices that may be applicable.

Comment: One commenter asked why the reference to ''pecans (in-shell basis)'' was removed from the definition of ''pound'' and whether references to pounds of pecans always mean in-shell or not shelled nuts.

Response: FCIC has revised the definition of ''pound'' to include that it is specifically on an ''in-shell'' basis.

Comment: A commenter suggested in the definition of ''scion'' to change ''plant'' to ''pecan variety'' and to remove the word ''stock'' and replace it with ''tree or branch'' as in the ''top work'' definition.

Response: There is duplication within the definitions of ''scion'' and ''top work'' so FCIC has revised the definition of ''scion'' to remove the duplication.

Comment: A commenter asked if removing the phrase ''terms and conditions'' (which is understood to refer to the policy provisions) from the definition of ''two-year coverage module'' means it is the insured who must meet all requirements in order for coverage to remain the same both years of the coverage module.

Response: Like other FCIC crop insurance programs, the insured must meet all terms and conditions of the insurance policy in order for coverage to remain in effect. However, FCIC has replaced the removed phrase to avoid any ambiguity with respect to when the terms of the policy can be revised in the second year of a two-year module.

Comment: Two commenters asked if the final rule is effective for the 2005 crop year, will the changes apply to insureds whose first year of coverage is 2004 and the second year of coverage is 2005 or will the changes be effective for the 2006 crop year for these insureds.

Response: If the Pecan Revenue Crop Provisions is effective for the 2005 crop year, it will be applicable for those insureds whose first year of a two-year coverage module is 2005. If an insured's first year of the two-year coverage module is 2004 (under the pilot program phase), then the pilot policy will still be effective for the 2005 crop year. Like any other amendment to the policy, the new Crop Provisions would be applicable for the 2006 crop year if the policy remained in force.

Comment: Section 2—Eighteen commenters requested consideration in allowing additional basic units by share or lease agreement. The commenters stated in many cases growers may have several different lease agreements and the orchards could be located in several different areas. Each orchard has different soil characteristics, age of the pecan trees, or access to water and is subject to different perils. As growers are required to market these blocks separately and maintain separate records, no additional burden would be placed on the grower. Some of the commenters suggested for program consistency of the crop insurance program, optional unit division should be allowed on a noncontiguous land basis as provided in other tree crops such as apples, almonds, and walnuts.

Response: FCIC has revised section 2 to allow coverage by enterprise unit or basic unit. An enterprise unit will consist of all insurable acreage in the county. A basic unit as defined in the Basic Provisions will allow units by share. The insured can only select one unit structure and it will be effective for both years of the two-year coverage module. Pecan insurance is a history-based individual program where both price and yield come from the producer. Currently there are only two other history-based individual programs available (adjusted gross revenue and avocado), one of which does not offer any unit division. At this time, too little data is available to fully assess the impact of smaller units on history-based revenue products. Given the uncertain risk, the optional unit provisions contained in the Basic Provisions are not applicable.

Comment: Two comments suggested the percent of coverage under the Catastrophic Risk Protection Endorsement (CAT) be contained in the Crop Provisions rather than shown in the Special Provisions.

Response: It would not be practical to put the percent of coverage for CAT in the Crop Provisions. Should legislation revise the CAT level of coverage, the Special Provisions could be quickly and easily updated. If the percentage amount were contained in these Crop Provisions, FCIC would have to make changes through a regulatory process causing unnecessary time delays in implementation. No change has been made.

Comment: A commenter questioned if the provisions contained in the Basic Provisions (section 3(g)(2)) regarding the High-Risk Land Exclusion Option was applicable to pecans. As section 3 of the Crop Provision replaces all of section 3 of the Basic Provisions the commenter asked if the provision should be reinstated in the Crop Provisions.

Response: FCIC agrees with the comments and has amended section 3 of the Pecan Revenue Crop Provisions to include the high-risk land provisions like those contained in the Basic Provisions.

Comment: Sixteen commenters noted the sequential thinning limitation of 12.5 percent contained in section 3(d)(1) is not appropriate for most pecan growers. Thinning trees in a pecan orchard increases sunlight penetration, which improves crop quality, quantity, and size as well as reducing disease pressure. The commenters stated no other tree crop is subjected to such a reduction in the insurance guarantee, and the sequential thinning reduction of 30 percent the first year after thinning and a 15 percent reduction the second year after thinning is penalizing pecan growers for following proven extension recommendations. The commenters stated the penalty is arbitrary and capricious because there is no published data to support the provisions regarding sequential thinning. All of the commenters stated the provision should be eliminated.

Response: FCIC recognizes thinning trees in a pecan orchard is beneficial for future production. However, amounts of insurance are based on the production capability of the acreage in the current crop year, not future crop years. A review of publications from Agricultural Research Service and Cooperative Extension Service indicates thinning does result in reduced pecan production for some period of time. Therefore, provisions must be included to adjust production to the expected capability of the acreage. However, FCIC has amended section 3(d)(1) to state if more than 12.5 percent of the total acres are sequentially thinned, the average gross sales for those acres thinned will be multiplied by a factor of .80 for only the

first year after thinning unless specified otherwise in the Special Provisions.

Comment: Nine comments received stated the 12.5 percent threshold for adding acreage contained in section 3(d)(2) is not practical. Some of the commenters indicated growers would only add acreage when it is significant enough to justify expansion. All of the commenters thought the pecan pilot program had exemplary experience throughout the pilot phase and should have the same considerations as other California tree programs that allow a 70 percent increase in added acreage. A few of the commenters stated very few pecan orchards would ever have a historical dollar amount as low as the dollar span contained in the actuarial documents. The 12.5 percent threshold for added land then becomes a greater penalty if the sales records for the added acreage are not provided and a growers' own production history would be diluted when their approved average revenue combined with the history from the added acreage. Some of the commenters suggested growers be allowed to add up to 500 acres per county at the same approved average revenue as the existing units, and for acreage greater than the 500 acre limit, the lowest available dollar span provided in the actuarial documents should apply to such acreage over 500 acres.

Response: FCIC disagrees with the commenters. Pecans cannot be compared to programs that are available in California because they are a different plan of insurance. Most California perennial crop programs are actual production history (APH) plans of insurance while the pecan revenue program is a revenue plan of insurance. A review of FCIC's acreage data for the three states providing pecan revenue coverage show that pecan insured's annual average was approximately 201 acres of pecans for the years 1999 through 2003. For the 2003 crop year, approximately one third of the orchards insured in Georgia consisted of approximately 30 acres. Allowing an insured the ability to add 500 acres with no change in the average gross revenue is not reasonable and would cause excessive risk to the program. FCIC has determined that given the risks, recalculation of the approved average revenue when acreage is increased by more than 12.5 percent is appropriate. No change has been made.

Comment: One comment asked if, according to section 3(e), can the reduction in insurable acreage due to removal of a contiguous block of trees be done at any time during the two-year coverage module, or only if reported by the annual acreage reporting date.

Response: Section 3(e) has been revised to clarify that removal of a continuous block of trees must be reported at any time including within the two-year coverage module. Further, section 6 has been revised to clarify that failure to report removal of trees will result in a reduction in the insured acreage any time the circumstances become known.

Comment: For section 3(f), a commenter thought the provision should be written to make it clear that if gross sales for any year were not reported that both years would be assigned an amount if either year were missing. It should be clear or an insured could report gross sales for the year with high yields and not report the year with lower yields if it fell below the assigned amount of 75 percent of the approved average revenue.

Response: FCIC agrees assigning 75 percent of the approved average revenue for the year gross sales amounts are not reported may encourage an insured to not report the low yields. FCIC has revised section 3(f) to state if gross sales amounts are not reported, an amount would be assigned for the missing year. The assigned amount will be the lowest dollar span provided in the actuarial documents.

Comment: Two commenters stated section 3(g) indicates hail and fire coverage may be excluded if additional coverage is selected. Additional coverage could include the 50 percent, 55 percent, and 60 percent coverage levels that do not qualify the insured to exclude these perils. The provision needs to be amended to indicate these perils can only be excluded at 65 percent coverage level and at 100 percent price or an equivalent coverage.

Response: FCIC disagrees with the commenters. The Basic Provisions define additional coverage as a level of coverage greater than 65 percent coverage level.

Comment: Two commenters thought there seemed to be a conflict between sections 4(a), (d), and 5(e) where the cancellation date is listed as January 31 of the second crop year of each two-year coverage module. Section 4(a) states that coverage terms may change between any two-year coverage module and section 4(d) states that any policy changes will be provided not later than 30 days prior to the cancellation date. One of the commenters suggested changing the word ''between'' in section 4(a) to ''for.''

Response: FCIC has made the revision as suggested for section 4(a). FCIC agrees there may be some ambiguity regarding when changes can be made to the policy and when they will be provided to the insured. As stated above, FCIC has replaced language in the definition of ''two-year coverage module'' stating that the same terms and conditions will apply to each year of the module unless Congress or the producer do something to require a policy change. If the producer does something under the policy to affect coverage, sections 4(a), (d), and 5(a) would not be applicable. Further, producers cannot change their coverage in the middle of the module. However, if Congress makes a change prior to the second year of the module, the producer will need to receive notice of such changes prior to the cancellation date. FCIC has revised the provisions to specify that such changes will be provided 30 days prior to the termination date.

Comment: Two comments received expressed concern with section 4(b) in which RMA's Web site is provided. The commenters thought it might lead to policyholders contacting RMA rather than their agents. In addition, the language states any policy changes will be available on RMA's Web site not later than the contract change date but there are instances where the policy changes may not be available on the contract change date, for instance, if a final rule is published on the actual contract change date, the new documents may not be on the Web site for a few days.

Response: Policy changes posted on RMA's Web site are intended to provide alternative methods for producers to access policy changes by the contract change date. Should any producers contact RMA with questions regarding their insurance coverage, they generally are advised to contact their crop insurance agent for assistance. If policy changes are not available by the contract change date, they are not effective for the crop year. Rules are filed and available for public inspection with the **Federal Register** several days prior to the date of publication. Therefore, there is no reason why the policy changes would not be posted on RMA's Web site by the contract change date. No changes will be made to section 4(b).

Comment: One commenter suggested revising section 5(a) to include language contained in the Basic Provisions section 2(a) to clarify it is a continuous policy ''until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us.''

Response: FCIC agrees and section 5(a) has been revised accordingly.

Comment: One comment stated the language contained in section 6(b) seemed to indicate that the acreage would no longer be reduced as it was in

the pilot phase, only the insurance guarantee would be reduced. If that is the intent, the commenter asked why refer to reducing the insurance guarantee rather than one of the defined terms for the basis of the insurance.

Response: Section 6(a)(1) requires the insured to report the number of acres that are affected by the specified circumstances. Some of those circumstances may result in a reduction in insured acreage, others may only affect the gross sales. Therefore, section 6 has been revised to separate out those that affect acreage from those that affect gross sales and require the applicable adjustment to the insured acreage or amount of insurance per acre. Further, section 6(c) now makes it clear that either the insured acreage or amount of insurance per acre may be adjusted if the applicable circumstances are not reported.

Comment: Five commenters stated the requirement of a written agreement to insure pecan trees that have been hedged is improper. Hedging is a common recommended practice in the southwest region and is used to increase sunlight penetration, increase yields, and can aid in control of alternate bearing years.

Response: Section 8(f) of the Crop Provisions states hedging may be insurable if allowed by the Special Provisions or by written agreement. Some southwestern county actuarial documents have incorporated statements to insure hedged trees and in those counties a written agreement will not be required. However, the practice is not common everywhere and FCIC has not determined the effect of hedging trees in all areas where pecans are produced. As additional data is collected and FCIC regional offices review the data, more counties may include a Special Provision statement to allow insurance on hedged trees. No change has been made.

Comment: Three commenters expressed concern in the omission of a provision in the pilot policy that was not in the proposed rule and questioned if the intent was to insure pecans that are direct marketed to consumers. The commenter stated loss adjusters must appraise each grove before harvest and provide a price from three buyers. Appraisals could be inaccurate due to the lack of grading and pricing standards used in the industry, and insuring direct marketed pecans will increase administrative expenses since multiple appraisals will have to be made each time the trees are shook in order for there to be acceptable records of production to count. The commenters asked FCIC to reinstate the provision specifying pecans that are direct marketed to consumers is not insured unless allowed by the Special Provisions or by written agreement.

Response: FCIC did not intend to insure pecans directly marketed to consumers unless allowed by the Special Provisions or written agreement. FCIC agrees that the burden and costs are much higher due to the multiple harvesting of pecans and has added the provisions back to section 8(f).

Comment: One comment suggested rewording section 8(e) to ''that are improved pecan varieties'' since the definition includes ''a distinguishable planting pattern.''

Response: FCIC has removed the definitions of ''improved pecan varieties'' and ''unimproved pecan varieties'' since FCIC insured both improved and unimproved varieties in the pilot program, it has elected to continue to insure all pecan varieties.

Comment: One comment questioned why the new provision in section 8(e) requires '' * * * an orchard that consists of a minimum of one (1) contiguous acre, unless allowed by written agreement.'' The commenter asked why the provision was added and how the size was determined. The commenter asked if small orchards (less than one acre) considered to be at greater risk, or if they involve proportionately greater administrative expense than larger orchards. They asked how that compares to the increased expense involved in the written agreement process if those pecan producers still want coverage.

Response: Pecan orchards are susceptible to a number of risks if good farming practices are not carried out. FCIC believes pecan orchards must be of some size for good farming practices to be carried out. Requiring orchards be at least one acre in size should minimize the chance of insuring orchards where recommended farming practices are not utilized and the risks would be greater. FCIC believes there are few orchards less than an acre in size and very few written agreements will be requested.

Comment: Eight comments disagreed with the provision contained in section 9(a) that required a written agreement to insure acreage in which more than 10 percent of the total acreage is unimproved pecan varieties. All of the commenters stated many of the seedlings produce the same quality and quantity as improved varieties, with some areas having a higher value than the improved varieties in Georgia. Commenters stated as seedling pecans constitute a significant part of the acreage in many regions, all varieties should be allowed to be insured as all levels of protection are either based on county averages or proven yields. All of the commenters stated that while in the pilot phase, the pecan program was not limited to improved varieties and it should be up to each individual region to determine what, if any, type or variety should not be insured. Many of the comments stated the requirement for a written agreement is ill advised, cumbersome, difficult to manage and too much extra work for the producers, agents, and FCIC.

Response: FCIC agrees and has removed section 9(a) and all references to unimproved and improved varieties. All pecans will now be insurable.

Comment: Two comments were received regarding the requirement contained in section 10(a)(1) that notification of acceptance or rejection of an application would be made within 30 days after the sales closing date. One commenter thought 30 days did not provide sufficient time to complete and review the required inspection. One commenter stated that the 30 day requirement was reasonable and much more to their satisfaction than the previous 10 day requirement.

Response: Under the pilot program, a crop inspection and acceptance or rejection of the application had to be completed within 10 days. FCIC recognized insurance providers needed additional time to inspect the acreage and determined that 30 days provides a good balance between the needs of producers to know whether they have coverage and time for the required inspections. No changes will be made.

Comment: One commenter agreed with section 10(b)(1) to allow coverage on acreage acquired up to the acreage reporting date. The commenter recommended the acreage reporting date be March 31 which would allow for the many orchards that change ownership in February or March to be handled in accordance with these provisions.

Response: Acreage report dates are being adjusted and will be set on a regional basis determined by the growing season. For the 2005 crop year, the acreage reporting date will be March 1.

Comment: One comment asked if section 10(b)(2) meant if the insurable share is relinquished between the first and second years of the two-year coverage module, whether the insured should report zero acres on the acreage report for the second year. If so, there seems to be a loophole in requirement that pecans be insured both years of the two-year coverage module.

Response: This provision does not provide a loophole because it is only applicable if the producer no longer has

an insurable interest in the orchard. In those cases, the producer should not be required to pay premium on acreage when the producer no longer has an insurable interest and cannot receive an indemnity. If the producer continues to have an interest in the pecans, coverage cannot be canceled during the two-year coverage module.

Comment: Section 10 of the proposed rule revised the dates for when coverage begins and the end of the insurance period. Nine commenters suggested the sales closing date, acreage reporting date and production reporting dates be changed to dates other than currently in effect. Four of the comments indicated an acreage reporting date and production reporting date of April 1 would be consistent with a grower's schedule. This change would allow a grower the time to know which groves he will have for the coming year and harvesting and sales of the crop would be complete. Five of the commenters stated the southwestern growers do not start harvest until November or December and a sales closing date of February or March would be better suited for the southwestern growers. Three southwestern growers stated that some growers enter into pools and do not receive a final price until July or August. FCIC must consider the appropriateness of all growing areas when establishing crop insurance reporting dates.

Response: FCIC recognizes the required dates in the pilot program were not suitable for all regions. Program dates contained in the Crop Provisions have been changed and are no longer the same as those in the pilot program. All other reporting and program date requirements are contained in the actuarial documents and will be revised as appropriate for the growing area.

Comment: One comment suggested that section 10(b)(2)(i) be revised to ''A transfer of right to an indemnity'' rather than ''A transfer of coverage and right to an indemnity.''

Response: FCIC agrees with the comment and the provision has been revised accordingly.

Comment: Two commenters recommended revising section 11 to clarify fire is an insured cause of loss only when due to natural causes, consistent with the Federal Crop Insurance Act and the Crop Insurance Handbook.

Response: This change is not necessary because the Act requires all causes of loss to be natural causes, not just fire. Specifically referring to natural disasters with respect to fire but not the other causes could create the impression that such other causes of loss could be caused by something other than natural causes. No change will be made.

Comment: In response to the provision contained in section 11(a)(8), one comment questioned how likely plant disease or insects would cause a failure of the irrigation water supply. It was suggested the language contained in the pilot policy would be sufficient rather than specifying ''11(a)(1) through (7).''

Response: While it is highly unlikely that plant disease or insects would cause failure of the irrigation water supply, such coverage is provided in most other policies, and should be provided here to protect any possibility. Further, the proposed language would not eliminate this coverage. The specific reference to paragraphs (1) through (7) is needed to ensure that coverage is limited to those perils included in this policy and not those that may be included in other policies that may be different. No change will be made.

Comment: Two comments indicated the provision in section 12(b) requires appraisals be made when determining production to count for production sold by direct marketing. Pecan trees are harvested three times and the provision entails making three appraisals for each orchard, which is very expensive from an administrative standpoint. Both commenters asked if there were any other types of records that would be acceptable and could alleviate the need to do an appraisal on all of the direct marketing situations regardless of whether or not the acreage is in a loss situation.

Response: As stated above, FCIC revised section 8 of these Crop Provisions to reinsert the pilot language specifying that production that is to be sold via direct marketing will only be insurable if provided in the Special Provisions or by written agreement. Therefore, the burdens are no different than existed in the pilot program. Further, because of the impossibility to verify production sold through direct marketing, appraisals must be conducted on direct marketed acreage. The provision contained in section 12(b) has been revised to clarify it only applies if the Special Provisions or a written agreement authorizes direct marketing.

Comment: One commenter wrote that section 12(d) specifies the insured must not sell, destroy or dispose of the damaged crop until after written consent has been given. They asked if pecans are selling for less than the market price, it is assumed there is damage. Since there is not a standard grading process, the commenter asks how an insurance provider determine what, if any, damage exists to give consent.

Response: Damage cannot be presumed from low market prices. The producer must still establish that any price decline was unavoidable and not caused by the actions of the producer or a third party (such as bioterrorism). Since the market price is determined on the date of the appraisal, the insurance provider should be able to determine whether an indemnified loss has occurred and whether to give consent to sell, destroy, or dispose of the crop.

Comment: One comment asked if section 13(d)(1)(i) should refer to ''amount of insurance per acre'' rather than ''insurance guarantee'' since it is not defined in the Crop Provisions.

Response: FCIC agrees with the comment and has revised the provision to specify ''amount of insurance per acre.''

Comment: A commenter suggested the example in section 13 be moved to the end of the section as some of the information comes from section 13(d).

Response: FCIC agrees with the suggestion and has revised section 13 so that the example of indemnity is contained at the end of the section and expanded the example to include sold and appraised production.

Comment: Nine commenters suggested additional pecan growers would benefit if the pecan crop insurance program were to be offered in other pecan producing states and counties. The commenters requested consideration is given to expand the availability of pecan crop insurance as it becomes a permanent insurance program.

Response: The criteria considered for crop program expansion does not change regardless of whether the pecan revenue program is a pilot or permanent program. FCIC expanded the pecan revenue program for the 2004 crop year based on expansion requests and supporting data. FCIC will continue to review county expansion requests on the merit of supporting data.

Comment: A commenter asked if section 18 of the Basic Provisions would be applicable and mean written agreements may be requested for organically certified pecans.

Response: To be consistent with other Crop Provisions, an organic practice premium rate factor will be in the actuarial documents and if qualified, organic acreage of pecans will be insured.

Comment: A commenter asked if section 36 ''Substitution of Yields'' of the Basic Provisions applies to pecans.

Response: Substitution of yield provisions are applicable for actual

production history plans of insurance. Pecans are insured under a revenue plan of insurance and section 36 of the Basic Provisions is not applicable. A new section 15 has been added for clarity.

Comment: One comment asked if the Pecan Disclaimer would still be required as part of the policy. If it is useful in making sure an insured understands the difference between the pecan policy and other multiple peril crop insurance policies, it should be updated according to these Crop Provisions.

Response: The Pecan Disclaimer is no longer required.

In addition to the changes described above, FCIC has made the following changes:

1. Modified the definition of ''approved average revenue per acre'' to clarify that if four years of gross sales records are not provided, the approved average revenue will be the average of two years of gross sales records and two years of the lowest available dollar span amount provided in the actuarial documents. If no gross sales records are provided, the approved average revenue will still be the lowest available dollar span amount provided in the actuarial documents.

2. Added a definition for ''enterprise unit'' to specify all insurable acreage in the county will be considered as an ''enterprise unit.'' This change is to clarify the revisions in section 2 that will allow both ''enterprise units'' and ''basic units.''

3. Revised section 7 to remove references to CAT. The Catastrophic Risk Protection Endorsement states that no premium is due for CAT policies and when administrative fees must be paid, but to prevent any ambiguity the phrase ''as applicable'' has been added.

4. Revised section 10 to add a provision as section 10(a)(2) to clarify for each two-year coverage module following application of the first two-year module, the policy will remain continuously in force and coverage begins the day immediately following the end of the insurance period for the prior two-year coverage module. Section 10(a)(2) has been renumbered as section 10(a)(3).

5. Added a new section 7(b)(3) to clarify when insurable pecan acreage is relinquished after the acreage reporting date, coverage will be provided for insurable causes of loss that occurs before the date the share was relinquished, and the premium earned for such acreage will be due for that crop year.

6. Amended section 11 to add a new section 11(b) to clarify if damage occurs before the beginning of the crop year, coverage is only provided if the crop was insured the previous crop year. The proposed section 11(b) has been renumbered as section 11(c).

7. Removed the phrase ''as determined by us'' from sections 13(d)(1)(v), 13(d)(2)(i), and 13(d)(2)(ii). This change is necessary due to the revisions in the definition of ''market price.''

8. Added a new section 16 (Written Agreement) clarifying that producers must have at least two years of production and gross sales records in counties with actuarial documents and at least four years of production and gross sales records in counties without actuarial documents to qualify for a written agreement.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. Good cause to make the rule effective upon less than 30 days after publication exists when the 30-day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

It is in the public interest to implement changes in this rule because it will provide improved insurance benefits for pecan producers. These changes include: Converts the pecan revenue insurance program from a pilot phase to a permanent program. This will allow the program to be expanded into areas where coverage was not previously provided; Increases insurance flexibility by providing additional insurance units for producers who lease multiple pecan orchards or have a share in the crop; Moves the contract change date to a later date to provide a greater amount of time between the contract change date and the sales closing date. This will allow producers more time to make insurance decisions; Changes the limitation on the amount of trees that can be thinned in an orchard. Tree thinning is a recommended practice that will increase the pecan production one year after thinning; Allows hail and fire coverage to be excluded as causes of loss if additional coverage levels are selected; and Provides clarification of what actions may cause changes in the amount of pecan revenue insurance.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the next crop year. This would mean the affected producers would be without the benefits described above for at least an additional year and those producers currently insured under the pilot insurance program, coverage would be delayed until the 2007 crop year because pecan coverage is provided under a two-year insurance module.

For the reasons stated above, good cause exists to make these policy changes effective less than 30 days after the publication in the **Federal Register**.

List of Subjects in 7 CFR Part 457

Crop insurance, Pecan, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation is amending 7 CFR part 457, Common Crop Insurance Regulations, for the 2005 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 2. Section § 457.167 is added to read as follows:

§ 457.167 Pecan revenue crop insurance provisions.

The Pecan Revenue Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies: (Appropriate title for insurance provider)

Both FCIC and reinsured policies: Pecan Revenue Crop Insurance Provisions

1. Definitions

AMS. The Agricultural Marketing Service of the United States Department of Agriculture.

Amount of insurance per acre—The amount determined by multiplying your approved average revenue per acre by the coverage level percentage you elect.

Average gross sales per acre—Your gross sales of pecans for a crop year divided by your net acres of pecans grown during that crop year. For example, if for the 2004 crop year, your gross sales were $100,000 and your net acres of pecans was 100, then your average gross sales per acre for the 2004 crop year would be $1,000.

Approved average revenue per acre—The total of your average gross sales per acre based on at least the most recent consecutive four years of sales records building to ten years and dividing that result by the number of years of average gross sales per acre. If you provide more

than four years of sales records, they must be the most recent consecutive 6, 8 or 10 years of sales records. If you do not provide at least four years of gross sales records, your approved average revenue will be:

(1) The average of two years of your gross sales per acre and two years of the lowest available dollar span amount provided in the actuarial documents; or

(2) If you do not provide any gross sales records, the lowest available dollar span amount provided in the actuarial documents.

Crop year—The period beginning February 1 of the calendar year in which the pecan trees bloom and extending through January 31 of the year following such bloom, and will be designated by the calendar year in which the pecan trees bloom.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as wholesaler, retailer, packer, processor, sheller, shipper, buyer or broker. Examples of direct marketing include selling through an on-farm or roadside stand, or a farmer's market, or permitting the general public to enter the field for the purpose of harvesting all or a portion of the crop, or shelling and packing your own pecans.

Enterprise unit—In lieu of the definition of ''enterprise unit'' contained in the Basic Provisions, for pecan revenue, an enterprise unit will be all your insurable pecan acreage in the county in which you have any share on the date coverage begins for the crop year.

Gross sales—Total value of in-shell pecans grown during a crop year.

Harvest—Collecting mature pecans from the orchard.

Hedge—The removal of vegetative growth from the tree to prevent overcrowding of pecan trees.

In-shell pecans—Pecans as they are removed from the orchard with the nut-meats in the shell.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Market price—The market price that is the greater of:

(1) The average price per pound for in-shell pecans of the same variety or varieties insured offered by buyers on the day you sell any of your pecans, you harvest any of your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, in the area in which you normally market the pecans (If buyers are not available in your immediate area, we will use the average in-shell price per pound offered by buyers nearest to your area.);

(2) The actual price received for any sold pecan production;

(3) The average of the AMS prices for similar quality pecans published during the week you sell any of your pecans, you harvest your pecans if they are not sold, or your pecans are appraised if you are not harvesting them (For example, if you sell production on November 5 and harvest production on November 14 but do not sell the production, the average of the AMS prices for the week containing November 5 will be used to determine the market price for the production sold on November 5 and the average of the AMS prices for the week containing November 14 will be used to determine the market price for the production harvested on November 14).

Net acres—The insured acreage of pecans multiplied by your share.

Pound—A unit of weight equal to sixteen ounces avoirdupois of in-shell pecans.

Scion—Twig or portion of a pecan variety used in top work.

Sequentially thinned—A method of systematically removing pecan trees for the purpose of improving sunlight penetration and maintaining the proper spacing necessary for continuous production.

Set Out—The transplanting of pecan trees into the orchard.

Top work—To graft scions of one pecan variety onto the tree or branch of another pecan variety.

Two-year coverage module—A two-crop-year subset of a continuous policy in which you agree to insure the crop for both years of the module, and we agree to offer the same premium rate, amount of insurance per acre, coverage level, terms and conditions of insurance for each year of coverage except for legislatively mandated changes, as long as all policy terms and conditions are met for each year of the coverage module, including the timely payment of premium, and you have not done anything that would result in a revision to these terms, as specified in this policy.

2. Unit Division

(a) For both years of the two-year coverage module a unit will be:

(1) A enterprise unit as defined in section 1; or

(2) A basic unit as defined in section 1 of the Basic Provisions.

(b) Provisions in section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number, by irrigated and non-irrigated practices, or grown under an organic farming practice are not applicable.

3. Insurance Guarantees and Coverage Levels for Determining Indemnities

In lieu of section 3 of the Basic Provisions the following applies:

(a) You may select only one coverage level for both years of the two-year coverage module for all pecans in the county. By giving us written notice, you may change the coverage level for the succeeding two-year coverage module not later than the sales closing date of the next two-year coverage module.

(b) For coverage in excess of catastrophic risk protection, your insurance guarantee for the unit will be determined by multiplying your amount of insurance per acre by the net acres.

(c) For coverage under the Catastrophic Risk Protection Endorsement, your insurance guarantee for each unit equals your approved average revenue per acre multiplied by the percentage listed in the Special Provisions and multiplied by the net acres.

(d) Your amount of insurance per acre will remain the same as stated in the Summary of Coverage on each unit for each year of the two-year coverage module unless:

(1) Otherwise provided in the Special Provisions, you sequentially thin more than 12.5 percent of your insured acres, your average gross sales for those acres thinned will be multiplied by a factor of .80 for the first year after thinning or a factor contained in the Special Provisions.

(2) You increase the previous year's insured acreage by more than 12.5 percent, which will result in the recalculation of your approved average revenue using the sales records for the added acreage. If such sales records are not available for the added acreage, the lowest available dollar span amount provided in the actuarial documents will apply to the added acreage.

(3) You take any other action that may reduce your gross sales below your approved average revenue, which will result in an adjustment to your approved average revenue to conform to the amount of the reduction in gross sales expected from the action.

(e) If you remove a contiguous block of trees from the unit, you must report such removal on your acreage report in accordance with section 6, or within 3 days if removal has occurred after the acreage reporting date, and your insurable acreage will be reduced by the number of acres of trees that have been removed.

(f) You must report for each unit your gross sales including the amount of harvested and appraised potential production to us for each year of the

two-year coverage module on or before the acreage reporting date for the first year of the next two-year coverage module.

(1) If you do not report your gross sales in accordance with this paragraph, we will assign a gross sales amount for any year you fail to report. The gross sales amount assigned by us will be not greater than the lowest available dollar span provided by the actuarial table for the current coverage module.

(2) If your gross sales are reported after the acreage reporting date for the two-year coverage module, we will readjust your average gross sales per acre for the next crop year.

(3) The gross sales or your assigned gross sales amount will be used to compute your sales history for the next two-year coverage module.

(4) If you filed a claim for any year, the value of harvested production and appraised potential production used to determine your indemnity payment will be the gross sales for that year.

(g) Hail and fire coverage may be excluded from the covered causes of loss for this insurance plan only if additional coverage is selected, and you have purchased the same or a higher dollar amount of coverage for hail and fire from us or another source.

(h) If you have additional coverage for pecans in the county and the acreage has been designated as ''high risk'' by FCIC, you will be able to obtain a High Risk Land Exclusion Option for the high risk land under the additional coverage policy and insure the high risk acreage under a separate Catastrophic Risk Protection Endorsement, provided that the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the additional coverage was obtained.

(i) Any person may sign any document related to pecan crop insurance coverage on behalf of any other person covered by this policy provided that person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign.

4. Contract Changes

In lieu of the provisions contained in section 4 of the Basic Provisions:

(a) We may change the terms of your coverage under this policy for any two-year coverage module. Any change to your policy within a two-year coverage module may only be done in accordance with this policy.

(b) Any changes in policy provisions, amounts of insurance, premium rates, and program dates (except as allowed herein or as specified in section 3) can be viewed on the RMA Web site at *http://www.rma.usda.gov/* or a successor website not later than the contract change date contained in these Crop Provisions. We may revise this information after the contract change date to correct clerical errors.

(c) The contract change date is October 31 preceding the next two-year coverage module.

(d) After the contract change date, all changes specified in section 4(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions, Crop Provisions, and a copy of the Special Provisions. If changes are made that will be effective for the second year of the two-year coverage module, such copies will be provided not later than 30 days prior to the termination date. If changes are made that will be effective for a subsequent two-year coverage module, such copies will be provided not later than 30 days prior to the cancellation date. For changes effective for subsequent two-year coverage modules, acceptance of the changes will be conclusively presumed in the absence of written notice from you to change or cancel your insurance coverage in accordance with the terms of this policy.

5. Life of Policy, Cancellation and Termination Dates

(a) In lieu of section 2(a) of the Basic Provisions, this is a continuous policy with a two-year coverage module and will remain in effect for each subsequent two-year coverage module until canceled by you in accordance with the terms of this policy or terminated by us or by the operation of the terms of this policy.

(b) In lieu of section 2(c) of the Basic Provisions, after acceptance of your application, you may not cancel or transfer your policy to a different insurance provider during the initial two-year coverage module. Thereafter, the policy will continue in force for each succeeding two-year coverage module unless canceled, terminated, or transferred to a different insurance provider in accordance with the terms of this policy.

(c) In lieu of section 2(d) of the Basic Provisions, this contract may be canceled by either you or us for the next two-year coverage module by giving written notice on or before the cancellation date.

(d) Your policy may be terminated before the end of the two-year coverage module if you are determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with section 2(e) of the Basic Provisions or 7 CFR part 400, subpart U.

(e) The cancellation date is January 31 of the second crop year of each two-year coverage module.

(f) The termination date is January 31 of each crop year.

6. Report of Acreage

(a) In addition to the requirements of section 6 of the Basic Provisions you must report, by the acreage reporting date designated in the Special Provisions:

(1) Any damage to trees, removal of trees, change in practices, sequential thinning in excess of 12.5 percent of your insured acreage or any other action that may reduce the gross sales below the approved average revenue upon which the amount of insurance per acre is based and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern;

(4) Any acreage that is excluded under sections 8 or 9; and

(5) Your gross sales receipts as required under section 3(f);

(b) We will reduce the amount of your insurable acreage based on our estimate of the removal of a contiguous block of trees or damage to trees of the insured crop. We will reduce your amount of insurance per acre based on our estimate of the expected reduction in gross sales from a change in practice or sequential thinning in excess of 12.5 percent of your insured acreage.

(c) If you fail to notify us of any circumstance stated in section 6(a)(1), we will reduce your insured acreage or your amount of insurance per acre to an amount to reflect the expected reduction of gross sales, as applicable, at any time we become aware of the circumstance.

7. Annual Premium and Administrative Fees

In addition to the requirements of section 7 of the Basic Provisions, the premium and administrative fees, as applicable, are due annually for each year of the two-year insurance period.

8. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the pecans in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for harvest as pecans;

(c) That are grown in an orchard that, if inspected, is considered acceptable by us;

(d) That are grown on trees that have reached at least the 12th growing season after either being set out or replaced by transplants, or that are in at least the 5th growing season after top work and have produced at least 600 pounds of pecans in-shell per acre in at least one year after having been grafted;

(e) That are in an orchard that consists of a minimum of one (1) contiguous acre, unless allowed by written agreement; and

(f) That are not (unless allowed by the Special Provisions or by written agreement):

(1) Grown on trees that are or have been hedged; or

(2) Direct marketed to consumers.

9. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, pecans interplanted with another perennial crop are insurable if allowed by the Special Provisions or by written agreement.

10. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on February 1 of each crop year. However, for the year of application, we will inspect all pecan acreage and will notify you of the acceptance or rejection of your application not later than 30 days after the sales closing date. If we fail to notify you by that date, your application will be accepted unless other grounds exist to reject the application, as specified in section 2 of the Basic Provisions of the application. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) For each subsequent two-year coverage module that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior two-year coverage module. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent two-year coverage module will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period is January 31 of the crop year.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of pecans on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A request for a transfer of right to an indemnity is submitted by all affected parties and approved by us;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

(3) If you relinquish your insurable share on any insurable acreage of pecans after the acreage reporting date for the crop year, insurance coverage will be provided for any loss due to an insurable cause of loss that occurred prior to the date that you relinquished your insurable share and the whole premium will be due for such acreage for that crop year.

11. Causes of Loss

(a) In lieu of the first sentence of section 12 of the Basic Provisions, insurance is provided against an unavoidable decline in revenue due to the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire unless weeds and other forms of undergrowth have not been controlled or unmulched pruning debris has not been removed from the orchard;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 11(a)(1) through (7) that occurs during the insurance period; or

(9) Decline in market price;

(b) If damage occurs before the beginning of the crop year, coverage is only provided if and to the extent the crop was insured the previous crop year;

(c) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to the inability to market the pecans for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

12. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) If the Special Provisions permit or you have a written agreement authorizing direct marketing, you must notify us at least 15 days before harvest begins if any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine the dollar value of your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised dollar value of production to count that is not less than the amount of insurance per acre for the direct-marketed acreage if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity, you must notify us at least 15 days prior to the beginning of harvest, or immediately if a loss occurs during harvest, so that we may inspect the damaged production.

(d) You must not sell, destroy or dispose of the damaged crop until after we have given you written consent to do so.

(e) If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

(f) You may be required to harvest a sample, selected by us, to be used for appraisal purposes.

13. Settlement of Claim

(a) Indemnities will be calculated separately for each year in the two-year coverage module.

(b) We will determine your loss on a unit basis.

(c) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the amount of insurance per acre by the net acres of the insured pecans;

(2) Subtracting the dollar value of the total production to count as determined in section 13(d) from the result of section 13(c)(1):

(i) For additional coverage, the total dollar value of the total production to count determined in accordance with section 13(d); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total dollar value of the total production to count determined in accordance with section 13(d) by the catastrophic risk protection factor contained in the Special Provisions; and

(d) The dollar value of the total production to count from all insurable acreage will include:

(1) The value of all appraised production as follows:

(i) Not less than your amount of insurance per acre for acreage;

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 12;

(C) That is damaged solely by uninsured causes;

(D) For which no sales records or unacceptable sales records are provided to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the value of production to count; and

(v) The market price will be used to value all appraised production in section 13(d)(1); and

(2) The value of all harvested production from the insurable acreage determined as follows:

(i) The dollar amount obtained by multiplying the number of pounds of pecans sold by the market price for each day the pecans were sold;

(ii) Totaling the results of § 457.167(d)(2)(i), as applicable;

(iii) The dollar amount obtained by multiplying the number of pounds of pecans harvested, but not sold production, by the market price;

(iv) Totaling the result of § 457.167(d)(2)(iii), as applicable; and

(v) Totaling the results of § 457.167(d)(2)(ii) and (iv).

PECAN REVENUE EXAMPLE

Year	Acres	Average pounds per acre	Average gross sales per acre
2004	100	750	$1,050
2003	100	625	625
2002	100	200	250
2001	100	1250	750
Total Average Gross Sales Per Acre			2,675

The approved average revenue equals the total average gross sales per acre divided by the number of years ($2,675 ÷ 4 = $669).

The amount of insurance per acre equals the approved average revenue multiplied by the coverage level percent ($669 × .65 = $435).

Assume the insured produced, harvested and sold 70 acres of pecans with 300 pounds per acre of pecans on the 13th with an average price per pound of $0.75, an actual price received of $0.73, and an average AMS price of $0.74, and elected not to harvest the other 30 acres of pecans, which were appraised on the 30th at 100 pounds per acre, but because of the quality, the average price per pound was $0.65 and an average AMS price was $0.64. The total dollar value of production to count is (300 pounds × $0.75 × 70 net acres) + (100 pounds × $0.65 × 30 net acres) = $15,750 + $1,950 = $17,700.

The indemnity would be:

The amount of insurance per acre multiplied by the net acres minus the dollar value of the total production to count equals the dollar amount of indemnity ($435 × 100 = $43,500.00 − $17,000.00 = $25,800).

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

15. Substitution of Yields

The substitution of yield provisions of the Basic Provisions are not applicable.

16. Written Agreements

Not withstanding the provisions of section 18 of the Basic Provisions, for counties with actuarial documents for pecans, you must have at least two years of production and gross sales records and for counties without actuarial documents, you must have at least four years of production and gross sales records to qualify for a written agreement.

Signed in Washington, DC, on August 19, 2004.

David C. Hatch,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–19446 Filed 8–23–04; 9:20 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1434

RIN 0560–AH17

Nonrecourse Marketing Assistance Loan and Loan Deficiency Payment Regulations for Honey

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the regulations governing the Honey Nonrecourse Marketing Assistance Loan (MAL) and Loan Deficiency Payment (LDP) Programs of the Commodity Credit Corporation (CCC). This rule allows honey pledged as collateral for securing an MAL or to be eligible for an LDP to be stored in CCC-approved, five-gallon plastic storage containers, in addition to the plastic Intermediate Bulk Containers already allowed, metal containers, and steel containers. This rule is intended to increase the storage options for honey producers that participate in the MAL and LDP programs.

DATES: This rule is effective August 25, 2004. Comments on this rule must be

received on or before October 25, 2004 in order to be assured of consideration. Comments received after that date may be considered to the extent practicable.

ADDRESSES: The Farm Service Agency invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

- *E-Mail:* Send comments to *Kimberly_Graham@wdc.usda.gov.*
- *Fax:* Submit comments by facsimile transmission to (202) 690–3307.
- *Mail:* Send comments to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency, United States Department of Agriculture (USDA), STOP 0512, Room 4095–S, 1400 Independence Avenue, SW., Washington, DC 20250–0512.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095–S, 1400 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this rule is available on the PSD home page at *http://www.fsa.usda.gov/dafp/psd.* All comments will become a matter of public record, including the name, mailing address, and e-mail address of the commenting party.

FOR FURTHER INFORMATION CONTACT: Kimberly Graham, (202) 720–9154, e-mail: *Kimberly.Graham@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule allows honey stored in CCC-approved, 5-gallon plastic containers to be eligible for MAL's and LDP's. This change will make CCC regulations more consistent with marketing practices in the honey industry, especially regarding producers of relatively small quantities of honey. Most honey marketed in the U.S. is stored in metal drums or plastic storage units called Intermediate Bulk Containers (IBC's), and the majority of commercially exported and imported honey is stored in steel drums. However, producers of smaller quantities of honey, who normally market through local channels like farmer markets or local groceries, often store it in smaller plastic containers, which are significantly less expensive than metal drums or IBC's. Producers who use these smaller plastic containers are currently not eligible for honey MAL's and LDP's. CCC has determined that storing honey in 5-gallon plastic containers is a normal marketing practice, and their use does not increase the risk to the honey loan collateral. Thus, this rule provides that honey stored in CCC-approved, 5-gallon plastic containers is eligible for MAL's and LDP's, and requests public comment on this change.

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (2002 Act) provides that the regulations needed to implement Title I of the 2002 Act, including those involved here, may be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Because this rule involves technical storage and packaging requirements, it was determined to be in the public's interest to solicit comments on the rule. The rule is effective upon publication in order to benefit producers in 2004, and because the rule is consistent with commercial storage practices used, under limited circumstances, for years.

Executive Order 12866

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

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required to publish a notice proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

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

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to

the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically for downloading or electronic submission through the USDA eForms Web site at *http://forms.sc.egov.usda.gov/eforms.*

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

List of Subjects in 7 CFR Part 1434

Honey, Loan programs-agriculture, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 1434 is amended as follows:

PART 1434—NONRECOURSE MARKETING ASSISTANCE LOAN AND LDP REGULATIONS FOR HONEY

■ 1. The authority citation for part 1434 continues to read as follows:

Authority: 7 U.S.C. 7931.

■ 2. Amend § 1434.8 by revising paragraphs (a) and (b)(4) to read as follows:

§ 1434.8 Containers and drums.

(a)(1) To be eligible for assistance under this part, honey must be packed in:

(i) CCC-approved, 5-gallon plastic containers;

(ii) 5-gallon metal containers;

(iii) Steel drums with a capacity not less than 5 gallons nor greater than 70 gallons, or

(iv) Plastic Intermediate Bulk Containers (IBC's).

(2) Honey stored in plastic containers must be determined safe and secure from all possibility of contamination.

(3) Honey storage containers used for these purposes must meet requirements of the Federal Food, Drug and Cosmetic Act, as amended and other specified requirements, as determined by CCC and must be generally fit for the purpose for which they are to be used.

(4) CCC-approved 5-gallon plastic containers must hold approximately 60 pounds of honey. The containers must be free and clear of leakage and punctures and of suitable purity for food contact use and meet food storage standards as provided by CCC. Plastic containers must be new or previously used only to store honey. Plastic containers previously used to store chemicals, pesticides, or any other product or substance other than honey are ineligible for honey storage. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover opening must not be damaged in any way that will prevent a tight seal. Containers that have been punctured and resealed will not be acceptable;

(5) The 5-gallon metal containers must hold approximately 60 pounds of honey, and must be new, clean, sound, uncased, and free from appreciable dents and rusts. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover and container opening must not be damaged in any way that will prevent a tight seal. Containers that are punctured or have been punctured and resealed by soldering will not be acceptable; and

(6) The steel drums must be an open type and filled no closer than 2 inches from the top of the drums. Drums must be new or must be used drums that have been reconditioned inside and outside. Drums must be clean, treated inside and outside to prevent rusting, fitted with gaskets that provide a tight seal and have an inside coating suitable for honey storage.

(7) IBC's are bulk containers with a polyethylene inner bottle and a galvanized steel protective cage, a capacity of either 275 or 330 gallons, and are reusable. IBC's must be clean, sound and provide a tight seal.

(b) * * *

(4) Containers that do not meet the specified requirements of paragraph (a) of this section or other CCC specifications or requirements.

* * * * *

Signed in Washington, DC, on July 6, 2004.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 04–19401 Filed 8–24–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 1987C–0023]

Listing of Color Additives Subject to Certification; D&C Black No. 2; 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 July 28, 2004 (69 FR 44927). The final rule amended the color additive regulations to provide for the safe use of D&C Black No. 2 (a high-purity furnace black, subject to FDA batch certification) as a color additive in the following cosmetics: Eyeliner, brush-on-brow, eye shadow, mascara, lipstick, blushers and rouge, makeup and foundation, and nail enamel. The action was in response to a petition filed by the Cosmetic, Toiletry, and Fragrance Association. The final rule published with inadvertent errors. This document corrects those errors.

DATES: See the first correction under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3423.

SUPPLEMENTARY INFORMATION: In the FR Doc. 04–17153, appearing on page 44927, in the **Federal Register** of July 28, 2004, the following corrections are made:

■ 1. On page 44927, in the third column, the section entitled ''**DATES**,'' is corrected to read:

DATES: This rule is effective August 30, 2004. Submit objections and requests for a hearing by August 27, 2004. See section IX of this document for information on the filing of objections.

■ 2. On page 44929, in the third column, under the section ''**Objections**,'' the heading and paragraph are corrected to read:

IX. Objections

This rule is effective as shown in the ''**DATES**'' section of this document; except as to any provisions that may be stayed by the filing of proper objections. Any person who will be adversely affected by this regulation may at any time file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the

objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

Dated: August 18, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–19398 Filed 8–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 2000N–1520]

Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency, Change From ''Junior'' to ''Light''

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that amends its menstrual tampon labeling regulation to change the current term for tampons that absorb 6 grams (g) and under of fluid. A tampon with absorbency of 6 g or less is currently required to be labeled as ''junior''. FDA is changing the term ''junior'' to ''light''. The term ''junior'' implies that the tampon is only for younger or teenage women when, in fact, it may be appropriate for women of any age with light menstrual flow. FDA encourages women to use the lowest absorbency tampon appropriate for their flow to help minimize the risk of Toxic Shock Syndrome (TSS). At present, FDA requires standardized terms to be used for the labeling of a menstrual tampon to indicate its particular absorbency. This rule enables women to compare the absorbency of one brand and style of tampons with the absorbency of other brands and styles. FDA is issuing this final rule under the Federal Food, Drug, and Cosmetic Act (the act) to ensure that labeling of menstrual tampons is not misleading.

DATES: This rule is effective February 27, 2006.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 26, 1989 (54 FR 43766), FDA published a final rule which, among other things, amended its menstrual tampon labeling regulation to standardize the existing absorbency terms (junior, regular, super, and super plus) corresponding to the following four absorbency ranges: Less than 6, 6 to 9, 9 to 12, and 12 to 15 g of fluid. FDA announced the availability of the term for 15 to 18 g absorbency tampons (''ultra'') in the **Federal Register** of October 18, 2000 (65 FR 62317). When commenting on that proposed rule, manufacturers argued that women should use the least absorbent tampon necessary and that the amount of their menstrual flow, not the age or size of a woman, should determine the absorbency of the tampon she should use. FDA is also aware of literature suggesting that, to minimize the risk of TSS, the lowest absorbency of tampon that is effective should be chosen.

II. The Proposed Rule

In the **Federal Register** of October 18, 2000, FDA published a proposed rule to amend its tampon labeling regulation to change the current term for tampons that absorb 6 g and under of fluid. FDA proposed this change because it believes that changing the standard term for this absorbency range from ''junior'' to ''light'' will improve consumer understanding of tampons across brands, and it will make it easier for women to adhere to advice in the tampon labeling about reducing the risk of TSS. The 90-day comment period closed on January 16, 2001. The agency received comments from two tampon manufacturers.

III. Response to Comments

(Comment 1) Both companies supported FDA's proposal to change the absorbency term for tampons that absorb 0 to 6 g of fluid from ''junior'' to ''light''. They agreed with the agency's position that this change will reduce the mistaken impression held by many women that the term ''junior'' means the tampons are intended only for younger or teenage women, rather than referring to the amount of menstrual flow.

Comments from both manufacturers noted that the proposed effective date of 90 days after publication of the final rule in the **Federal Register** would not allow sufficient time for manufacturers to deplete their inventories of existing packaging materials or revise labeling and artwork on retail packages. Both companies recommended the agency allow a 24-month period following publication of the final rule in the **Federal Register** during which tampons that absorb 6 g or less of fluid could be sold with either a ''junior'' or a ''light'' designation. One company recommended that only those tampons which have a valid date code within 24 months of publication of the final rule in the **Federal Register** be allowed to carry the ''junior'' designation.

(Response) Based on available information regarding labeling of these devices, FDA has concluded that 18 months after publication of the final rule should be sufficient for manufacturers to implement the ''light'' absorbency designation on their product package labeling.

(Comment 2) Comments from the manufacturers also suggested that the change to ''light absorbency'' in the U.S. tampon labeling regulation will result in inconsistency with current Canadian tampon labeling requirements. Both companies recommended agency harmonization with the Canadian requirements so that the same tampon absorbency terms are acceptable in both the United States and Canada.

(Response) The agency intends to work with the Canadian device authorities to harmonize required absorbency terms for tampons.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order

and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Any small entity that decided to enter the market for this product would incur no additional costs because of this rule, as that entity would already be required to identify the absorbency ranges of its tampons. Because this rule imposes minimal costs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $110 million. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The purpose of this final rule is to amend the menstrual tampon labeling regulation changing the current absorbency term ''junior'' to ''light'' to improve consumer understanding of tampon absorbency rates. All manufacturers of menstrual tampons with an absorbency range of less than or equal to 6 g will have to change their package labels and any other labeling using the term ''junior'' in reference to these products. This is a minor label change because it only requires changing one word on the labeling and will not affect label formatting or the space requirements. Manufacturers should incur minor or no incremental costs as a result of this rule because they will have 18 months in which to implement the changes and the change can be incorporated when new labels are ordered. The 18-month implementation period should also allow manufacturers to deplete their current label inventory.

The Small Business Administration (SBA) classifies a medical device entity as ''small'' if it has fewer than 500 employees. There are about 10 domestic manufacturers that will be affected by this rule, 5 of which meet SBA's definition of a small entity. Frequent relabeling is a cost of doing business in the consumer health products market. Some companies will be able to incorporate this labeling change at no additional cost when making other voluntary label changes. The incremental cost of a minor label change such as this is between $600 and $3,000, depending on the type of packaging and printing method. A manufacturer will incur this cost for each individual package size it markets that contains tampons with an absorbency rate of 6 g or less. The incremental cost to relabel is less than 1 percent of the small entities' product revenues. Therefore, the final rule will not have a significant economic impact on small entities.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule does not contain information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule requires tampon manufacturers to provide specific wording supplied by FDA on their labeling. Such information is not included in the definition of ''collection of information'' under the Paperwork Reduction Act regulation (5 CFR 1320.3(c)(3)).

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

PART 801—LABELING

■ 1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

■ 2. Section 801.430 is amended by revising the table in paragraph (e)(1) to read as follows:

§ 801.430 User labeling for menstrual tampons.

* * * * *

(e) * * *

(1) * * *

Ranges of absorbency in grams[1]	Corresponding term of absorbency
6 and under	Light absorbency
6 to 9	Regular absorbency
9 to 12	Super absorbency
12 to 15	Super plus absorbency
15 to 18	Ultra absorbency
Above 18	No term

[1]These ranges are defined, respectively, as follows: Less than or equal to 6 grams (g); greater than 6 g up to and including 9 g; greater than 9 g up to and including 12 g; greater than 12 g up to and including 15 g; greater than 15 g up to and including 18 g; and greater than 18 g.

* * * * *

Dated: August 18, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–19488 Filed 8–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–04–103]

RIN 1625–AA08

Special Local Regulations; 2004 MTV Video Music Awards, American Airlines Arena, Port of Miami, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the 2004 MTV Video Music Awards at the American Airlines Arena in the Port of Miami, Florida. These regulations are necessary for the safety of life on navigable waters. The MTV Video Music Awards Boat Parade will be held on August 29, 2004, and the parade route includes the waters of the Miami Main Channel, the Miami Harbor turning basin and the American Airlines Arena Marina Basin, with the staging area at the United States Coast Guard Base. These regulations exclude non-participant vessels from entering the regulated areas, including the staging

area, parade route and arena marine basin.

DATES: These regulations are effective from 3 p.m. until 11 p.m. on August 29, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD07–04–103] and are available for inspection or copying at Coast Guard Sector Miami, 100 MacArthur Causeway, Miami Beach, Florida, 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC Vaughn, Coast Guard Sector Miami, Florida at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for these regulations. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public safety interests. The organizers of the event were not able to provide necessary information prior to the event and with sufficient time remaining to publish an NPRM. As the event will be held on Sunday, August 29, 2004, there is not sufficient time to allow for a notice and comment period prior to its occurrence. Additionally, numerous spectator craft and participant craft will be in close proximity to each other around the staging area, parade area and arena marine basin, compromising the safety of all vessels in the heavily congested area. For these safety reasons, it is in the public interest to have these regulations in effect during the event. Advance notifications will be made via marine information broadcasts.

For the same reasons, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The 2004 MTV Video Music Awards will be held in Miami at the American Airlines Arena. A boat parade of award recipients will precede the award ceremony. The boat parade will be a nighttime parade of approximately 20 vessels. The vessels range in length from 20 to 100 feet. Approximately 200 spectator craft are expected to view the parade from the waterway. The parade will form in the staging area at the Coast Guard base then proceed south into the Port of Miami, Main Channel, then west into the Miami Harbor turning basin, then west into the American Airlines Arena marina basin. The regulated area includes the staging area, parade route and arena marine basin.

Discussion of Rule

These special local regulations prohibit non-participant vessels from entering the regulated areas, which include the staging area, parade route and arena marine basin.

The staging area encompasses all waters surrounding the Coast Guard base in Miami Beach. No anchoring or entry will be permitted in the staging area.

The parade area begins at the southerly end of the staging area, then south to the Main Channel, then west into the Miami Harbor turning basin in a box formed by the following coordinates:

MTV 1 25°46′03″ N, 080°08′45″ W,
MTV 2 25°46′07″ N, 080°08′43″ W,
MTV 3 25°47′05″ N, 080°11′02″ W,
MTV 4 25°46′57″ N, 080°11′04″ W,
MTV 5 25°46′52″ N, 080°10′47″ W,

and then continues west into the marine basin at the American Airlines Arena. During transit of the parade, these regulations prohibit non-participating vessels from entering the parade area, unless authorized by the Coast Guard Patrol Commander.

The regulated area at the American Airlines Arena will consist of an area marked off by buoys at the following positions:

M1 25°47′07″ N, 080°11′07″ W,
M2 25°47′05″ N, 080°11′01″ W,
M3 25°47′03″ N, 080°10′56″ W,
M4 25°46′59″ N, 080°10′52″ W,
M5 25°46′53″ N, 080°10′53″ W,
M6 25°46′48″ N, 080°10′56″ W,

and the bridge transiting over to Dodge Island.

These regulations prohibit non-participating vessels from entering the area, unless authorized by the Coast Guard Patrol Commander.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). These regulations will have a minimal impact on non-participant and non-spectator vessels due to the normally low volume of vessel traffic on the regulated waterways when the regulation is effective. Moreover, this rule is only in effect for 8 hours. Also, it regulates only the waters immediately surrounding the parade vessels, and it moves with the parade vessels. Therefore, it should have a minimal impact on non-participant and non-spectator vessels.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the regulated area from 3 p.m. to 11 p.m. on August 29, 2004. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule is for a highly publicized event and will only be in effect for 8 hours when vessel traffic normally is minimal. Any traffic that needs to pass through the regulated area will be allowed to pass with the permission of the Coast Guard Patrol Commander once the parade participants have moved further along the parade route.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under the **FOR FURTHER INFORMATION CONTACT** section for assistance in understanding and participating in this rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandate Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design or operation; test methods; sampling procedures; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.35T–07–103 to read as follows:

§ 100.35T–07–103, 2004 MTV Video Music Awards, American Airlines Arena, Port of Miami, Miami, FL.

(a) *Regulated areas.* (1) The staging area encompasses all waters surrounding the Coast Guard Island that are west of Government Cut.

(2) The parade area begins at the southerly end of the staging area, then south to the Main Channel, then west into the Miami Harbor turning basin in a box formed by the following coordinates:

MTV 1 25°46′03″ N, 080°08′45″ W,
MTV 2 25°46′07″ N, 080°08′43″ W,
MTV 3 25°47′05″ N, 080°11′02″ W,
MTV 4 25°46′57″ N, 080°11′04″ W,
MTV 5 25°46′52″ N, 080°10′47″ W,

and then continues west into the marina basin at the American Airlines Arena.

(3) The marine basin regulated area at the American Airlines Arena will consist of an area marked off by buoys in the following positions:

M1 25°47′07″ N, 080°11′07″ W,
M2 25°47′05″ N, 080°11′01″ W,
M3 25°47′03″ N, 080°10′56″ W,
M4 25°46′59″ N, 080°10′52″ W,
M5 25°46′53″ N, 080°10′53″ W,
M6 25°46′48″ N, 080°10′56″ W,

and the bridge transiting over to Dodge Island.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Miami, Florida.

(c) *Special Local Regulations.* (1) *Staging area.* Entry or anchoring in the staging area by nonparticipating vessels is prohibited, unless authorized by the Patrol Commander.

(2) *Parade route.* During the parade, non-participating vessels are prohibited from entering or anchoring in the parade area, unless authorized by the Patrol Commander.

(3) *Arena marine basin.* The American Airlines Arena has a marine

basin to the northeast of the main facilities. This basin will be used to moor various spectator, participant and entertainment vessels. Entry or anchoring in the arena marine basin by nonparticipating vessels is prohibited, unless authorized by the Patrol Commander.

(d) *Effective period:* This section is effective from 3 p.m. until 11 p.m. on August 29, 2004.

Dated: August 16, 2004.

D.B. Peterman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 04–19451 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA159–5083a; FRL–7805–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision of Flow Control Date in Nitrogen Oxides Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to convert a conditional approval in the Virginia State Implementation Plan (SIP) to a full approval. As required by the conditional approval, Virginia has submitted a SIP revision that pertains to the allowance banking provisions in Virginia's Nitrogen Oxides (NO_X) Budget Trading Program. The SIP revision changes the start date of flow control from 2006 to 2005. Flow control is a limitation on banked allowances that are used for compliance purposes, and is required to start in the second year of the trading program. It is triggered when the regionwide total of banked allowances exceeds a specified threshold. The year 2005 will be the second year of Virginia's NO_X Budget Trading program. EPA is approving this revision to Virginia's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on October 25, 2004 without further notice, unless EPA receives adverse written comment by September 24, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by VA159–5083 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov*

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No.VA159–5083. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 8, 2003 (68 FR 40520), EPA published a final rulemaking notice (FRN) for the Commonwealth of Virginia. The FRN approved Virginia's NO_X Budget Trading Program, with the exception of its NO_X allowance banking provisions, which EPA conditionally approved. EPA's rationale for approving Virginia's NO_X Budget Trading Program while conditionally approving the program's allowance banking provisions were provided in the November 12, 2002 (67 FR 68542) notice of proposed rulemaking (NPR), and discussed in detail in EPA's response to public comments in the FRN and will not be restated here. The terms of the conditional approval required that Virginia revise its banking provisions by changing the flow control start date from 2006 to 2005, and submit the change as a SIP revision within one year from August 7, 2003, the effective date of the conditional approval.

II. Summary of SIP Revision

On June 23, 2004, the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its SIP. The SIP revision pertained to Virginia's banking provision at 9 VAC 5–140–550, and changed the flow control start date from 2006 to 2005. Virginia's NO_X Budget Trading Program was implemented in 2004, therefore flow control will start in the second year of the program, which is consistent with the other states subject to the NO_X SIP Call. Virginia has therefore satisfied the terms of the conditional approval.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides

a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law,Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its [*] program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Final Action

EPA is converting its conditional approval of the Commonwealth of Virginia SIP pertaining to its allowance banking provisions at 9 VAC 5–140–550 to a full approval. The SIP revision submitted submitted by the State changes the flow control start date from 2006 to 2005. Virginia has therefore corrected the deficiency identified by EPA in its NO_X Budget Trading Program, and has satisfied all the terms of the conditional approval.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to convert the conditional approval to a full approval if adverse comments are filed. This rule will be effective on October 25, 2004 without further notice unless EPA receives adverse comment by September 24, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the allowance banking provisions in Virginia's NO_X Budget Trading Program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone.

Dated: August 18, 2004.

Richard J. Kampf,

Acting Regional Administrator

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entry for 9 VAC 5, Chapter 140, section 5–140–550 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * *	*	*	*	*
Chapter 140	NO_X Budget Trading Program [Part I]			
Part I Emission Standards				
* * *	*	*	*	*
Article 6	NO_X Allowance Tracking System			
* * *	*	*	*	*
5–140–550	Banking	March 24,	August 25, 2004.	
* * *	*	*	*	*

§ 52.2450 [Amended]

■ 3. In § 52.2450, paragraph (c) is removed and reserved.

[FR Doc. 04–19432 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[OW–2003–0067; FRL–7805–5]

RIN 2040–AE62

National Primary Drinking Water Regulations: Analytical Method for Uranium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the use of three additional analytical methods for compliance determinations of uranium in drinking water. These methods use an inductively coupled plasma mass spectrometry (ICP–MS) technology that has gained wide acceptance in the analytical community. EPA believes that ICP–MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies previously approved in the December 2000 Radionuclides rule. (65 FR 76708) This rule does not withdraw approval of any previously approved monitoring methods for uranium.

DATES: This rule is effective on August 25, 2004. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of August 25, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2003–0067. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OW Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)

566–1744, and the telephone number for the Docket Center is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: General Information—Lisa Christ, Office of Ground Water and Drinking Water, Mail Code: 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8354; e-mail address: *christ.lisa@epa.gov,* Technical information—David Huber, Office of Ground Water and Drinking Water, Mail Code: 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4878; e-mail address: *huber.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

Entities potentially regulated by this regulation are public water systems that are classified as community water systems (CWSs). A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	NAICS[1]
Industry	Privately-owned community water systems.	221310
State, tribal, local, and Federal Government	Publicly-owned community water systems.	924110

[1] National American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.66 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. What Is EPA's Statutory Authority and Background for This Final Rule?

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) that specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401 (42 U.S.C. 300f(1)(A)). According to SDWA section 1401(1)(D), NPDWRs include ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures.'' In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA. EPA's promulgation of analytical methods is authorized under these sections of the SDWA, as well as the general rulemaking authority in SDWA section 1450(a), (42 U.S.C. 300j–9(a)). The action proposed herein would affect CWSs. CWSs are a subset of public water systems. (40 CFR 141.2)

On December 7, 2000 (65 FR 76708), EPA published a final radionuclides rule in the **Federal Register** that included monitoring requirements and a MCL of 30 micrograms per liter (30 μg/L) for uranium that took effect in December 2003. In the preamble to the December 2000 rule, EPA noted that several commenters asked EPA to consider the approval of compliance monitoring methods that use an inductively coupled plasma mass spectrometry (ICP–MS) technology. (65 FR 76724) These commenters suggested that ICP–MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies approved in the December 2000 rule. In response to these comments, EPA stated that the Agency was reviewing ICP–MS technology for possible proposal in a future rulemaking.

EPA proposed the approval of three methods that use ICP–MS technology for compliance determinations of uranium in drinking water in the **Federal Register** on June 2, 2004 (69 FR 31068). Specifically, EPA proposed the approval of ICP–MS methods published by EPA, ASTM International, and the Standard Methods (SM) Committee (EPA 200.8, ASTM D5673–03, and SM 3125). The proposed approval of the three ICP–MS methods did not, and does not, affect approval of the 15 methods already specified at 40 CFR 141.25(a) for compliance determinations of uranium.

EPA has completed its review of the comments received on the June 2, 2004, proposal and is today approving the three ICP–MS methods described above. The methods are very similar and are published by EPA, American Society for Testing and Materials International (ASTM), and the Standard Methods (SM) Committee. The methods are EPA 200.8, ASTM D5673–03, and SM 3125.

III. What Is EPA Doing Today?

EPA is taking final action to approve the use of three additional analytical methods for compliance determinations of uranium in drinking water. These methods use an ICP–MS technology that has gained wide acceptance in the analytical community. Method EPA 200.8 was published by EPA in 1994; method ASTM D5673–03 was published by ASTM International in 2003; and SM 3125 was published by the Standard Methods Committee in 1998. In today's action, EPA is approving the use of these ICP–MS methods for compliance determinations of uranium in drinking water.

This rule will be effective on August 25, 2004. Making this rule effective immediately is in the public interest. Because use of EPA-approved analytical methods is required, approval of these relatively inexpensive methods is expected to garner considerable cost savings. It is EPA's expectation that reducing the burdens on community water systems will encourage compliance with testing requirements themselves. Hence, today's rule expanding the limited number of available test methods for compliance determinations of uranium in drinking water should provide considerable relief to community water systems and EPA finds that it has good cause to make this rule effective immediately.

IV. Summary of ICP–MS Technology

EPA reviewed ICP–MS methods published by EPA, ASTM International, and the Standard Methods Committee. In each of these methods, sample material in solution is introduced by pneumatic nebulization into a radiofrequency plasma where energy

transfer processes cause desolvation, atomization, and ionization. The ions are extracted from the plasma through a differentially pumped vacuum interface and separated on the basis of their mass-to-charge ratio by a quadrupole mass spectrometer having a minimum resolution capability of one atomic mass unit peak width at five percent peak height. The ions transmitted through the quadrupole are detected by an electron multiplier or Faraday detector and the ion information processed by a data handling system. The sensitivity of each ICP–MS method for compliance determinations of uranium in drinking water is acceptable and is sensitive enough to detect at less than one part per billion (1 ug/L). The uranium MCL is 30 ug/L.

EPA reviewed each of these methods for performance and applicability to compliance determinations of uranium in drinking water. Three of these methods, EPA 200.8, ASTM D5673–03, and SM 3125, have acceptable performance and are otherwise suitable for compliance determinations of uranium in drinking water. Method EPA 200.8 was published by EPA in 1994; method ASTM D5673–03 was published by ASTM International in 2003; and SM 3125 was published by the Standard Methods Committee in 1998. In today's action, EPA is approving the use of these ICP–MS methods for compliance determinations of uranium in drinking water. EPA is taking this action in response to stakeholder requests.

EPA is not, in today's action, approving the use of these methods for any other purposes. EPA notes that EPA 200.8 was approved for compliance determinations of several regulated metals in drinking water on December 5, 1994. (59 FR 62456) EPA also recognizes that the other two ICP–MS methods approved through today's action for determination of uranium may also be applicable to monitoring for other drinking water contaminants. Although the analytical scope of ASTM D5673–03 and SM 3125 extends beyond uranium, these two methods were not published until 2003 and 1998, respectively. In a later rulemaking, EPA may consider extending the use of ASTM D5673–03 and SM 3125 to compliance determinations of other regulated metals.

Like fluorometric and laser phosphorimetry methods, ICP–MS measures uranium mass only; therefore, all caveats discussed in the December 2000 Radionuclides Rule on using mass methods to determine contributions to gross alpha also apply. (65 FR 76724)

Today's final rule does not affect approval of the 15 methods already specified at 40 CFR 141.25(a) for compliance determinations of uranium.

V. Response to Comment

EPA received a somewhat ambiguous letter during the public comment period of the proposed rule (69 FR 31068) that was published in the **Federal Register** on June 2, 2004. The Agency has withdrawn the direct final rule because of this letter. The commenter did not explicitly object to the approval of any of the three ICP–MS methods; however, he did seek clarification regarding the relationship of certain laboratory certification measures to these analytical methods. Specifically, the commenter noted that ''in the ''Manual for the Certification of Laboratories Analyzing Drinking Water'' all methods for uranium are addressed in the Radiochemistry chapter even though not all the methods are radiochemical based, *e.g.*, fluorometric and laser phosphorimetry. Unfortunately, the final and proposed actions don't address if the Radiochemistry chapter should also be applied to the ICP–MS determination of uranium.''

While the Agency does not believe the comment is directly relevant to the merits of the ICP–MS method itself, the Agency chooses to address it. The cited laboratory certification document is an EPA publication that States may use as a reference in developing programs for the certification of laboratories to conduct compliance monitoring under the Safe Drinking Water Act. The Agency believes that it is likely that States will apply the Radiochemistry chapter to the use of the ICP–MS methods approved in today's final rule, though that decision rests with the States.

The commenter also cited an alternate test procedures (ATP) Protocol for Organic and Inorganic Analytes. This protocol (EPA 821–B–98–002) was published by EPA in March 1999. The commenter stated that he believes that it is ''unclear from the final and proposed actions if any of the indicated methods are being designated as the reference method for ATP purposes.''

The ATP protocol applies only to the comparison of alternate test procedures for the determination of chemicals. This protocol does not apply to comparison of alternate test procedures for the determination of radionuclides, and EPA has not developed a protocol for radionuclides.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action does not impose any new requirements; rather, it approves three additional voluntary analytical methods for compliance determinations of uranium in drinking water.

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 in 40 CFR are listed in 40 CFR part 9.

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 businesses, small organizations, and small government jurisdictions.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. secs. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA's) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and finalized the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that Final Rule, the alternative definition would be applied to this regulation as well.

This final rule imposes no cost on any entities over and above those imposed by the final Radionuclides Rule. (65 FR 76708) This action merely allows three additional analytical methods for compliance determinations of uranium in drinking water. The use of these methods is voluntary because drinking water systems can continue to use the existing approved methods.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are public water systems serving 10,000 or fewer persons. We have determined that no number of small entities will be impacted by this voluntary action because drinking water systems can continue to use the existing approved methods.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed 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 rule contains no Federal mandates (under the regulatory provision of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or tribal governments or the private sector. It merely provides drinking water utilities with three additional voluntary analytical methods to use to meet existing monitoring requirements. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The adoption and use of these methods is voluntary because drinking water systems can continue to use the existing approved methods. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. There is no cost to State and local governments, and the final rule does not preempt State law. This final rule imposes no cost on any State, or local governments. This final rule merely provides for the voluntary use of three additional analytical methods for compliance determinations of uranium in drinking water. Thus, Executive Order 13132 does not apply to this final 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.'' ''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 final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There is no cost to tribal governments, and the final rule does not preempt tribal law. This final rule imposes no additional cost on any tribal government. This final rule merely provides for the voluntary use of three additional analytical methods for compliance determinations of uranium in drinking water. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885 April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under 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.

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 Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This final rule merely provides for the voluntary use of three additional analytical methods for compliance determinations of uranium in drinking water.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

This rulemaking involves technical standards. In addition to approving EPA 200.8, EPA has decided to approve two voluntary consensus methods (ASTM International D5673–03, and the Standard Methods (SM) Committee 3125) for compliance determinations of uranium in drinking water. Approval of these methods is in accordance with the goals of the NTTAA. EPA believes that ICP–MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies previously approved in the December 2000 Radionuclides Rule. (65 FR 76708) This rule does not withdraw approval of any previously approved monitoring methods for uranium. Copies of both voluntary consensus methods are available for viewing at the docket facility identified in **ADDRESSES** section.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 25, 2004.

List of Subjects for 40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: August 18, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 2. Section 141.25 is amended as follows:

■ a. Revising the entry for uranium in the table at paragraph (a),

■ b. Revising footnote 1 in the table at paragraph (a),

■ c. Revising footnote 2 in the table at paragraph (a),

■ d. Revising footnote 3 in the table at paragraph (a),

■ e. Revising footnote 5 in the table at paragraph (a),

■ f. Revising footnote 6 in the table at paragraph (a),

■ g. Revising footnote 8 in the table at paragraph (a),

■ h. Revising footnote 12 in the table at paragraph (a), and

■ i. Adding footnote 13 in the table at paragraph (a).

§ 141.25 Analytical methods for radioactivity.

(a) * * *

Contaminant	Methodology	Reference (method or page number)							
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]
*		*	*	*	*	*	*		*
Uranium [12]	Radiochemical.	908.0	.....	.....	.....	7500-U B			
	Fluorometric	908.1	.....	.....	.....	7500–U C (17th Ed.).	D 2907-97	R-1180-76 R-1181-76.	U-04.
	ICP-MS	200.8 [13]	.....	.....	.....	3125	D 5673-03		
	Alpha spectrometry.	.....	.....	00–07	p 33	7500-UC (18th, 19th or 20th Ed.).	D 3972-97	R-1182-76	U-02.
	Laser Phosphorimetry.	.....	.....	.....	.....	.....	D 5174-97		
*		*	*	*	*	*	*		*

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 and 13 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800) 426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC (Telephone: (202) 566–2426); or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

[1] ''Prescribed Procedures for the Measurement of Radioactivity in Drinking Water'', EPA 600/4–80–032, August 1980. Available at the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone (800) 553–6847), PB 80–224744, except Method 200.8, ''Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Revision 5.4, which is published in ''Methods for the Determination of Metals in Environmental Samples—Supplement I,'' EPA 600–R–94–111, May 1994. Available at NTIS, PB95–125472.

[2] ''Interim Radiochemical Methodology for Drinking Water'', EPA 600/4–75–008 (revised), March 1976. Available at NTIS, ibid. PB 253258.

[3] ''Radiochemistry Procedures Manual'', EPA 520/5–84–006, December, 1987. Available at NTIS, ibid. PB 84–215581.

[4] ''Radiochemical Analytical Procedures for Analysis of Environmental Samples'', March 1979. Available at NTIS, ibid. EMSL LV 053917.

[5] ''Standard Methods for the Examination of Water and Wastewater'', 13th, 17th, 18th, 19th Editions, or 20th edition, 1971, 1989, 1992, 1995, 1998. Available at American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Methods 7110B, 7500-Ra B, 7500-Ra C, 7500-Ra D, 7500-U B, 7500-Cs B, 7500-I B, 7500-I C, 7500-I D, 7500-Sr B, 7500–3H B are in the 17th, 18th, 19th and 20th editions. Method 7110 C is in the 18th, 19th and 20th editions. Method 7500-U C Fluorometric Uranium is only in the 17th Edition, and 7500-U C Alpha spectrometry is only in the 18th, 19th and 20th editions. Method 7120 is only in the 19th and 20th editions. Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Method 3125 is only in the 20th edition.

[6] *Annual Book of ASTM Standards,* Vol. 11.01 and 11.02, 1999; ASTM International any year containing the cited version of the method may be used. Copies of these two volumes and the 2003 version of D 5673–03 may be obtained from ASTM International. 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428–2959.

[7] ''Methods for Determination of Radioactive Substances in Water and Fluvial Sediments'', Chapter A5 in Book 5 of *Techniques of Water-Resources Investigations of the United States Geological Survey,* 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] ''EML Procedures Manual'', 28th (1997) or 27th (1990) Editions, Volumes 1 and 2; either edition may be used. In the 27th Edition Method Ra-04 is listed as Ra-05 and Method Ga-01-R is listed as Sect. 4.5.2.3. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

* * * * * * * *

[12] If uranium (U) is determined by mass, a 0.67 pCi/μg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ratio of U-234 and U-238 that is characteristic of naturally occurring uranium.

[13] ''Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Revision 5.4, which is published in ''Methods for the Determination of Metals in Environmental Samples—Supplement I,'' EPA 600–R–94–111, May 1994. Available at NTIS, PB 95–125472.

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[FR Doc. 04–19333 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[OW–2003–0067; FRL–7805–6]

RIN 2040–AE62

Withdrawal of Direct Final Rule; National Primary Drinking Water Regulations: Analytical Method for Uranium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA published a direct final rule on June 2, 2004 (69 FR 31008), concerning three additional analytical methods for compliance determinations of uranium in drinking water. EPA stated in the direct final rule that if the Agency received adverse comment by July 2, 2004, EPA would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received a somewhat ambiguous comment letter. EPA will address the comments in that letter in a final action based on the parallel proposal also published on June 2, 2004 (69 FR 31068). As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of August 25, 2004, EPA withdraws the direct final rule published at 69 FR 31008 on June 2, 2004.

FOR FURTHER INFORMATION CONTACT: General Information—Lisa Christ, Office of Ground Water and Drinking Water, Mail Code: 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8354; e-mail address: *christ.lisa@epa.gov.* Technical information—David Huber, Office of Ground Water and Drinking Water, Mail Code: 4606M, Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4878; e-mail address: *huber.david@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published the direct final rule and companion proposed rule for approval of the use of three additional analytical methods for compliance determinations of uranium in drinking water in the **Federal Register** on June 2, 2004 (69 FR 31008 and 31068). In the companion proposal, EPA proposed the approval of three methods that use an inductively coupled plasma mass spectrometry (ICP–MS) technology. Specifically, EPA proposed the approval of ICP–MS methods published by EPA, ASTM International, and the Standard Methods Committee (EPA 200.8, ASTM D5673–03, and SM 3125) for compliance determinations of uranium in drinking water. The proposed approval of the three ICP–MS methods did not affect approval of the 15 methods currently specified at 40 CFR 141.25(a) for compliance determinations of uranium.

In the companion proposed rule (69 FR 31068) section of the June 2, 2004, EPA invited comment on the substance of the direct final rule and stated that if adverse comments were received by July 2, 2004, the direct final rule would not become effective and a notice would be published in the **Federal Register** to withdraw the direct final rule before the August 31, 2004, effective date. The EPA subsequently received comment on the proposed rule.

List of Subjects for 40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: August 5, 2004.

Benjamin H. Grumbles,

Acting Assistant Administrator, Office of Water.

[FR Doc. 04–19334 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–P≤

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0168; FRL–7369–1]

Folpet; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the tolerance for residues of folpet in or on hops to delete the footnote stating that there are no registrations for the use of folpet on hops in the United States. The Interregional Research Project Number 4 (IR-4), requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 25 2004. Objections and requests for hearings, identified by docket identification (ID) number OPP–2004–0168, must be received on or before October 25, 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**. EPA has established a docket for this action under Docket ID number OPP–2004–0168. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Crystal Mall #2, Rm. 1801, South Bell St., 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.

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), 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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), 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.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of May 7, 2003 (68 FR 24467) (FRL–7305–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E6310) by IR-4, Center for Minor Crop Pest Management, Rutgers, The State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petition prepared by IR-4, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.191 be amended by establishing a tolerance for residues of the fungicide folpet, N-(trichloromethylthio)phthalimide, in or on U.S. grown hop, dried cones at 120 parts per million (ppm). EPA has

previously established a tolerance for folpet on hops in the **Federal Register** of March 5, 2003 (68 FR 10377) (FRL–7296–2). That tolerance applies to all hops in interstate commerce in the U. S. no matter what country the hops originate from. Nonetheless, because at the time that tolerance was established there was no registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, for use of folpet on hops, that fact was noted, as is EPA's general practice, in the tolerance regulation. A FIFRA registration has since been applied for and EPA plans to approve that registration simultaneous with promulgation of this final rule. This final rule amends the folpet tolerance to delete the statement regarding the lack of a FIFRA registration. Further, this action re-examines the safety determination for folpet because the prior action assumed that folpet would not be used on hops in the United States.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish or amend 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 folpet on hop, dried cones at 120 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 folpet as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed are discussed in the March 5, 2003 **Federal Register** document (OPP–2003–0075). There have been no changes in the toxicological profile since the March 5, 2003 **Federal Register** document (OPP–2003–0075) and, therefore, the Agency will not repeat the entire table in this final rule but refers to the original document.

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 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 factors (SF) or UFs may be used: ''Traditional UFs;'' the ''special FQPA safety factor;'' and the ''default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional UFs used prior to FQPA passage to account for database deficiencies. These traditional UFs 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 SF that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional UF or a special FQPA SF).

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 UF factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA SF or the default FQPA SF 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 folpet used for human risk assessment is shown in Table 1 of this unit:

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

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13–50 years of age)	NOAEL = 10 milligrams/kilograms/day (mg/kg/day) UF = 100 Acute RfD = 0.1 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD ÷ Special FQPA SF = 0.1 mg/kg/day	Rabbit developmental toxicity LOAEL = 20 mg/kg/day based on increase in number of fetuses and litters with hydrocephaly and related malformations.
Acute dietary (general population including infants and children)	An appropriate endpoint attributable to a single dose was not identified for the general population including infants and children for this risk assessment in the toxicological database.		
Chronic dietary (all populations)	NOAEL = 9 mg/kg/day UF = 100 Chronic RfD = 0.09 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD ÷ Special FQPA SF = 0.09 mg/kg/day	Combined chronic toxicity/carcinogenicity study in rats LOAEL = 35 mg/kg/day based on hyperkeratosis/acanthosis and ulceration/erosion of the non-glandular stomach in males and females.
Short-term dermal (1 to 30 days)	Dermal (or oral) study NOAEL = 10 mg/kg/day. (dermal absorption rate = 2.7%)	LOC for MOE = 100 (Occupational and residential)	Rabbit development toxicity LOAEL = 20 mg/kg/day based on increase in number of fetuses and litters with hydrocephaly and related malformations.
Intermediate-term dermal (1 to 6 months)	NOAEL (developmental) = 10 mg/kg/day (dermal absorption rate = 2.7%	LOC for MOE = 100 (Occupational and residential)	Rabbit developmental study LOAEL = 20 mg/kg/day based on increase in number of fetuses and litters with hydrocephaly and related malformations.
Long-term dermal (> 6 months)	Dermal (or oral) study NOAEL = 9 mg/kg/day (dermal absorption rate = 2.7% when appropriate)	LOC for MOE = 100 (Occupational and residential)	Combined chronic toxicity/carcinogenicity study in rats LOAEL = 35 mg/kg/day based on hyperkeratosis/acanthosis and ulceration/erosion of the non-glandular stomach in males and females.
Short-term inhalation** (1 to 30 days)	NOAEL (developmental) = 10 mg/kg/day	LOC for MOE = 100 (Occupational and residential)	Rabbit developmental study LOAEL = 20 mg/kg/day based on increase in number of fetuses and litters with hydrocephaly and related malformations. ** Assume inhalation absorption rate = 100% of oral absorption.
Intermediate-term inhalation** (1 week to several months)	NOAEL (developmental) = 10 mg/kg/day	LOC for MOE = 100 (Occupational and Residential)	Rabbit Developmental Study LOAEL = 20 mg/kg/day based on increase in number of fetuses and litters with hydrocephaly and related malformations. ** Assume inhalation absorption rate = 100% of oral absorption.
Long-term inhalation** (several months to lifetime)	NOAEL = 9 mg/kg/day	LOC for MOE = 100 (Occupational and residential)	Combined chronic toxicity/carcinogenicity study in rats LOAEL = 35 mg/kg/day based on hyperkeratosis/acanthosis and ulceration/erosion of the non-glandular stomach in males and females. ** Assume inhalation absorption rate = 100% of oral absorption.
Cancer (oral, dermal, inhalation)	Folpet is a B2 carcinogen (probable human carcinogen) based on the increased incidences of adenomas and carcinomas in the duodenum of male and female mice in two strains (CD-1 and B6C3F1). The Q1* is 1.86 x 10^{-3} (mg/kg/day).		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.191) for residues of folpet, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from folpet 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.

In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which

incorporates food consumption data as reported by respondents in the (United States Department of Agriculture) (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A Tier 3 acute probabilistic dietary exposure analysis was performed. The assumptions for most commodities (apple and apple juice; cranberries; cucumbers; grapes, grape juice, wine, raisins; lettuce; melons; onions; strawberries; and tomatoes) were anticipated residue levels (incorporated into residue distribution files) and the percent crop treated (PCT) estimate for imported crops consumed in the U.S. PCT for imported commodities is estimated at a maximum of 1%, based on information derived through an analysis of import and domestic production data available from the USDA for the years 1995 through 1999, adjusted for the countries in which folpet is registered. For avocados, the assumptions of the acute dietary exposure analysis were anticipated residue levels and 11 PCT (Florida avocado acreage is 11% of the total U.S. avocado acreage as reported by USDA and assuming all the crop in Florida is treated is considered very conservative). For hops, the assumptions of the acute dietary analysis were tolerance level residues (120 ppm) and 100 PCT.

ii. *Chronic exposure*. In conducting the chronic dietary risk assessment EPA used the DEEM-FCID™, which incorporates food consumption data 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: A Tier 3 chronic (non-cancer) dietary exposure analysis was performed. The assumptions for most commodities (apple and apple juice; cranberries; cucumbers; grapes, grape juice, wine, raisins; lettuce; melons; onions; strawberries; and tomatoes) were anticipated residue levels (incorporated into residue distribution files) and the PCT estimate for imported crops consumed in the U.S. (which is a maximum of 1%, based on information derived through an analysis of import and domestic production data available from the USDA for the years 1995 through 1999, adjusted for the countries in which folpet is registered). For avocados, the assumptions of the chronic dietary exposure analysis were anticipated residue levels and 11 PCT (because Florida avocado acreage is 11% of the total U.S. avocado acreage as reported by USDA). For hops, the assumptions of the chronic dietary analysis were tolerance level residues (120 ppm) and 100 PCT.

iii. *Cancer*. A Tier 3 chronic dietary exposure analysis was performed. The assumptions for most commodities (apple and apple juice; cranberries; cucumbers; grapes, grape juice, wine, raisins; lettuce; melons; onions; strawberries; and tomatoes) were anticipated residue levels (incorporated into residue distribution files) and the PCT estimate for imported crops consumed in the U.S. (which is a maximum of 1%, based on information derived through an analysis of import and domestic production data available from the USDA for the years 1995 through 1999, adjusted for the countries in which folpet is registered). For avocados, the assumptions of the chronic dietary exposure analysis were anticipated residue levels and 11 PCT (because Florida avocado acreage is 11% of the total U.S. avocado acreage as reported by USDA). For hops, the assumptions of the chronic dietary analysis were tolerance level residues (120 ppm) and 100 PCT.

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

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. As discussed in the Agency's March 5, 2003 final rule for folpet the only registered use of folpet in the United States is avocados grown in Florida. According to data available from the USDA's National Agricultural Statistics Service, California accounted for 89% of avocado production in the U.S. followed by Florida at nearly 11% and Hawaii at 0.1 %. Therefore, the Agency has assumed that only 11% of the U.S. avocado crop is treated with folpet (100% of the Florida grown avocados). For hops the Agency assumed 100 PCT (U.S. product and imported hops). For all other commodities (i.e., apple, cranberry, cucumber, grape, lettuce, melon, onion, strawberry, and tomato) based upon information derived through an analysis of import and domestic production data available from the USDA for the years 1995 through 1999 and adjusted for the countries in which folpet is registered.

The Agency believes that the three conditions listed Unit III.1.C.iv. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. In using these data, the Agency took into account the specific countries where folpet is registered. In the case of avocados, the Agency based it's PCT estimate on the volume of crop grown in Florida based on data from the USDA. Therefore, the Agency has assumed that only 11% of the U.S. avocado crop is treated with folpet. For all other commodities (except hops and avocados), the Agency has assumed (see March 5, 2003 folpet final rule) a maximum PCT of 1% for each commodity (i.e., apple, cranberry, cucumber, grape, lettuce, melon, onion, strawberry, and tomato) based upon information derived through an analysis of import and domestic production data available from the USDA for the years 1995 through 1999 and adjusted for the countries in which folpet is registered.

For all potentially treated commodities the Agency used estimated maximum PCT assumptions in conducting both the acute and chronic dietary exposure assessments. The exposure estimates from this approach the Agency is reasonably certain,

represent the highest levels to which individuals could be exposed, and are unlikely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant Subpopulation including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which folpet may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for folpet in drinking water (other than avocados in Florida all tolerances reflect imported commodities and monitoring data other than from Florida would probably not be useful). 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 folpet.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 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 LOC.

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 folpet they are further discussed in the aggregate risk Unit III.E.

Based on the Tier 1 FIRST and SCI-GROW models, the EECs of folpet for acute exposures are estimated to be 309 parts per billion (ppb) for surface water and 0.06 ppb for ground water. The EECs for chronic exposures are estimated to be 0.62 ppb for surface water and 0.06 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).

Folpet is currently registered for use on the following residential non-dietary sites: Fungicide/preservative in wood sealants for use on exterior wood surfaces including residential/recreational decks and playsets, as well as siding, shingles, and fences. There are two wood preservative product registered that have residential use sites. The risk assessment was conducted using the following residential exposure assumptions: Residential handlers may receive short-term dermal and inhalation exposure to folpet when applying the ready-to-use formulations. Adults and children may be exposed to folpet residues from dermal contact with treated wood during post-application activities. In addition, toddlers may receive short- and intermediate-term oral exposure from incidental ingestion (i.e., hand-to-mouth) during post-application activities on treated decks or playsets.

Exposure and risk estimates of dermal and inhalation exposure for residential handlers were assessed using: An oral NOAEL of 10 mg/kg/day (LOAEL = 20 mg/kg/day based on the increase in number of fetuses and litters with hydrocephaly and related malformations). Because the endpoints are based on an oral study, the estimated dermal exposures were adjusted by applying a 2.7% dermal absorption rate, while absorption in the lung was assumed to be 100%. In addition, these endpoints are applicable to females 13+ years old; therefore, a 60–kg body weight was used in the calculations. The endpoints are the same for both dermal and inhalation exposure therefore, the individual dermal and inhalation MOEs were combined into a total MOE. The dermal endpoint used in the adult post-application exposure assessment is the same as that for residential handlers. To assess toddler incidental ingestion and dermal exposure, the maternal NOAEL (10 mg/kg/day) from the rabbit developmental toxicity study; based on a decrease in food consumption at the LOAEL of 20 mg/kg/day, was used for risk assessment purposes because it occurs at the same dose level as the developmental NOAEL (i.e., protective of developmental effects), is from the same study, and is more applicable to toddlers than hydrocephaly effects, which apply only to females of child-bearing age. In addition, using the maternal NOAEL for the toddler dermal assessment is more protective in that it allows for combination with the toddler incidental oral assessment, because they are compared to the same endpoint. The FQPA safety factor was reduced to 1X for the U.S. population and all population subgroups and for all exposure scenarios, thus, the target MOE for risk assessment purposes is 100.

To quantify cancer risk, the Q1* of 1.86×10^{-3} mg/kg/day^{-1} was multiplied by the estimated lifetime average daily doses from handler and post-application exposure. As with the non-cancer assessment, dermal doses were first adjusted for dermal absorption (i.e., 2.7%) because the Q1* is based on an oral study, while inhalation doses were assumed to be 100% absorbed. Cancer risks for residential handler and postapplication that exceed the range of 1 in 1 million are indicative of concern.

Handler exposures were previously assessed in the 1999 Reregistration Eligibility Decision (RED) for folpet. However, the assessment has been revised in this document to account for the possibility of the residential handler wearing short sleeves and short pants,

rather than the long sleeves/pants assumed for both occupational and residential handlers in the RED.

Dermal and inhalation daily doses for residential handlers were calculated for the wood sealant formulation using data for applying a paint or stain. The following handler scenarios were evaluated:

1. Application of ready-to-use wood sealant with a paint brush.

2. Application of ready-to-use wood sealant using an airless sprayer.

The calculated non-occupational handler MOEs are greater than the target of 100, and therefore, are not of concern to the Agency. The handler cancer risks range from 7.6E–08 to 1.0E–07, which also do not exceed the Agency's LOC.

TABLE 2.—EXPOSURE AND RISK FOR RESIDENTIAL HANDLERS

Scenarios for Residential Folpet Uses	Amount Used	Short-Term MOE	Intermediate-Term MOE	Total /MOE	Cancer Risk
Apply sealant with a paint brush	5 gal/day	430	9,400	410	7.6E–08
Apply sealant with an airless sprayer	15 gal/day	420	1,100	300	1.0E–07

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 folpet and any other substances and folpet 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 folpet 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/*.

Captan and folpet share a common metabolite, thiophosgene, which the Agency believes to be responsible for the carcinogenic effects of these compounds. Thiophosgene is a highly reactive, short-lived compound. Studies indicate that thiophosgene causes local irritation of the site with which it comes in contact, and is believed to cause tumors through irritation of the duodenum. Because they are so short-lived, thiophosgene residues cannot be quantified. Without measurable residues of the common metabolite, it is difficult to relate exposures of captan to those of folpet since the formation of thiophosgene may be different for both compounds. However, assuming that the carcinogenic effects observed in both pesticides are due solely to the metabolite thiophosgene, the Agency believes it is reasonable to add the estimated cancer risks from the individual aggregate risks from both folpet and captan to obtain a worst-case estimate.

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 database 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 10X 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 UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*—a. The Agency made a determination of susceptibility, as well as performed a degree of concern analysis regarding pre- and/or postnatal toxicity resulting from exposure to folpet. The Agency recommended that the FQPA safety factor be reduced to 1X based upon the following:

i. There was no quantitative or qualitative evidence of increased susceptibility following *in utero* exposure in two developmental toxicity studies in the rat.

ii. There was no quantitative or qualitative evidence of enhanced susceptibility to the pups in two different two-generation reproduction studies in the rat.

iii. Although there was qualitative evidence of susceptibility in one developmental study in the rabbit (hydrocephaly (developmental LOAEL = 20 mg/kg/day; developmental NOAEL = 10 mg/kg/day)), and quantitative evidence of susceptibility in the other developmental study in the rabbit (delayed ossification (developmental LOAEL = 40 mg/kg/day; developmental NOAEL = 10 mg/kg/day)), the Agency determined that there is low concern for the observed susceptibility because:

- Clear NOAELs/LOAELs were established in these studies.
- There were inconsistencies in the results seen between these studies (hydrocephaly seen in one study was not seen in the other study).
- A conservative determination was made to use hydrocephaly as the endpoint for acute dietary, and short- and intermediate-term dermal and inhalation exposure scenarios, in spite of lack of replication of this effect.
- The dose selected for overall risk assessment would address the concerns for developmental toxicity seen in this species.
- The structure-activity relationship analysis showed that there was not evidence of increased susceptibility in rabbits following *in utero* exposure to captan, a structural analog of folpet.
- There are no other signs from the available toxicology database of a concern for neurotoxic effects.

b. Therefore, the Agency concluded that there is no residual uncertainty for prenatal and/or postnatal toxicity. The Agency also determined that a developmental neurotoxicity (DNT) study for folpet is not warranted based upon the following considerations:

i. The hydrocephalus seen in one fetus/1 litter at 20 mg kg/day in the presence of maternal toxicity was not seen at higher doses (40 or 160 mg/kg/day) in another study in the same strain of rabbit.

ii. No alterations to the fetal nervous system were seen in the developmental rat study at the same doses that induced hydrocephaly in the rabbits.

iii. Although there are no acute or subchronic neurotoxicity studies, there is no evidence of neurotoxicity or neuropathology in adult animals in any of the studies.

iv. The available data indicate that the DNT study would have to be tested at dose levels higher than 150 mg/kg/day, because no developmental toxicity was observed in rats at 2,000 mg/kg/day. In addition, given the results in the 2–generation reproduction study (NOAEL of 168 mg/kg/day), it is anticipated that in order to elicit any fetal nervous system abnormalities in the DNT study, the selected dose levels would have to be higher than 160 mg/kg/day.

v. Since the dose level selections for the DNT study would be greater than 160 mg/kg/day, the resultant NOAEL would be either comparable to, or higher than, the doses currently used in the risk assessment. The NOAEL of 10 mg/kg/day selected for the acute RfD and the residential exposure assessment are 17 times lower than the offspring NOAEL in the reproduction study. The NOAEL of 9 mg/kg/day selected for the chronic RfD is 19 times lower than the offspring NOAEL in the reproduction study. Therefore, it is unlikely that the DNT study would change the current doses used for overall risk assessments.

3. *Conclusion*. There is a complete toxicity database for folpet and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency has determined that the FQPA safety factor can be reduced to 1X based on the weight of the evidence considerations.

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, 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*. The Agency identified an aPAD for females 13 to 50 years old based on an increase in number of fetuses and litters with Hydrocephaly and related malformations in the rabbit developmental toxicity study at a LOAEL of 20 mg/kg/day (NOAEL = 10 mg/kg/day, UF = 100X, FQPA SF = 1X). An aPAD was not identified for the general population. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to folpet will occupy 6.4% of the aPAD for females 13 to 50. In addition, there is potential for acute dietary exposure to folpet in drinking water. No drinking water monitoring data are available for folpet, in fact it is only used in Florida on avocados. SCI-GROW and FIRST models were used to calculated EECs for this fungicide. Tier 1 (SCI-GROW) modeling estimates that folpet residues in ground water are not likely to exceed 0.06 ppb. Tier 1 (FIRST) surface water modeling for folpet residues predicts the peak (acute) EEC is not likely to exceed 309 ppb. After calculating DWLOCs for acute exposure to females 13–50 years old and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FOLPET FOR FEMALES 13–50 YEARS OLD (AN aPAD WAS NOT IDENTIFIED FOR THE GENERAL POPULATION.)

Population Subgroup/	aPAD (mg/kg/day)	% aPAD/mg/kg//day/(Food)	Surface Water EEC/(ppb)	Ground Water EEC/(ppb)	Acute DWLOC/(ppb)
Females 13 to 50 years	0.10	0.0064	309	0.094	2800

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to folpet from food will utilize <1% of the cPAD for the U.S. population and all population subgroups. Based the use pattern, chronic residential exposure to residues of folpet is not expected. In addition, there is potential for chronic dietary exposure to folpet in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

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

Population/Subgroup	cPAD/mg/kg/day	mg/kg/day/(Food)	Surface Water EEC/ (ppb)	Ground Water EEC/ (ppb)	Chronic/DWLOC (ppb)
U.S. population	0.09	0.000039	0.62	0.06	3,100
All infants	0.09	0.000045	0.62	0.06	900
Children 1–2	0.09	0.000107	0.62	0.06	900
Children 3–5	0.09	0.00009	0.62	0.06	900

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

Folpet is currently registered for uses that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for folpet.

Dermal NOAELs are based on a developmental effect (an increased number of fetuses and litters with hydrocephaly and related skull malformations), and the incidental oral NOAEL is based on a maternal effect (a decrease in food consumption). These effects were observed at the maternal or developmental LOAEL of 20 mg/kg/day (NOAEL = 10 mg/kg/day, UF = 100, FQPA SF = 1X) in the developmental toxicity study in rabbits. However, as in the post-application assessment, to assess toddler incidental ingestion and dermal exposure, the NOAEL based on the maternal decrease in food consumption was used because this effect is relevant to the population being assessed and the dose level is numerically equivalent to the dose level for the developmental NOAEL.

In the residential assessment, the highest adult exposure scenario (inhalation and dermal) was a residential handler applying a wood preservative with 0.66% active ingredient (ai) (EPA Reg. No. 577–539) to a deck or playset. The highest child exposure scenario (dermal and incidental oral) is a toddler being exposed while mulling around on the deck/playset after the wood preservative formulation has dried (24 hours after application). Exposure from these scenarios, in addition to background exposure from food and water, were used to estimate the short- and intermediate-term aggregate risk to adults and children from folpet. For adults and children, all exposure routes were combined.

An average food exposure was also used to estimate the short- and intermediate-term aggregate risk to adults and children from folpet. The highest average food exposures from the respective subpopulation groups were used, i.e. 0.000107 mg/kg/day for children (children 1–2 years), and 0.000039 mg/kg/day for adults (general U.S. population). The average food exposure for females 13 to 50 years (0.000032 mg/kg/day) was also considered, because the short- and intermediate-term dermal and inhalation developmental endpoint is particularly relevant to this subpopulation.

No drinking water monitoring data are available for folpet. SCI-GROW and FIRST models were used to calculate EECs for this fungicide. Tier 1 (SCI-GROW) modeling estimates that folpet residues in ground water are not likely to exceed 0.06 ppb micrograms (µg)/L). Additionally, Tier 1 (FIRST) surface water modeling for folpet residues predicts the annual average EEC is not likely to exceed 0.62 ppb.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 300. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of folpet in ground surface and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's LOC, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM AND INTERMEDIATE-TERM EXPOSURE TO FOLPET

Population/Subgroup	Aggregate/MOE/ (Food + Residential)	Aggregate LOC	Surface Water EEC/(ppb)	Ground Water EEC/ (ppb)	Short-Term DWLOC (ppb)
General U.S. population	300	100	0.62	0.06	2,300
Females 13 to 50 years	300	100	0.62	0.06	2,000
Children 1–2 years	160	100	0.62	0.06	3,700

4. *Aggregate cancer risk for U.S. population.* Chronic dietary and residential exposure are included in the aggregate cancer risk estimate. The residential exposure was calculated, as previously discussed, by averaging expected residential exposure over a lifetime (both handler dermal and inhalation and post-application dermal activities were included) as discussed in Unit III.C. Folpet and captan share a common metabolite, thiophosgene. Thiophosgene is highly reactive and severely irritating to mucus membranes and tissues it comes in contact with. Thiophosgene is believed to be responsible for the carcinogenic effects of these compounds. The carcinogenic effect of concern is gastrointestinal (GI) tract tumors from oral exposure to both folpet and captan. Therefore, the EPA believes it is reasonable to add the estimated cancer risks from the individual aggregate oral risks from both

folpet and captan to obtain a worst-case scenario. The Agency in fact used this approach when establishing the tolerance for hops previously (March 5, 2003 final rule). Dietary risks from both folpet and captan have not changed since the last risk assessment, and therefore the aggregate cancer assessment performed in the previous risk assessment has not changed (although the folpet EECs to which the aggregate cancer assessment is compared have changed, they do not impact the calculation, nor the conclusion).

Drinking water monitoring data are not available for folpet. SCI-GROW and FIRST models were used to calculate EECs for folpet in water. Tier 1 (SCI-GROW) modeling estimates that folpet residues in ground water, from the only U.S. registered use on avocados in Florida, are not likely to exceed 0.06 ppb (µg/L). Additionally, Tier 1 (FIRST) surface water modeling for folpet residues predicts the average annual (chronic-term) EEC is not likely to exceed 0.62 ppb (µg/L).

TABLE 6.—CANCER DWLOC CALCULATIONS (USING THE Q* APPROACH) FOR FOLPET

Population	Chronic Food/ Exposure/(mg/ kg/day)	Residential/Exposure/(mg/kg/ day)	Total. cancer exposure/(mg/ kg/day)	Ground Water EEC/(µg/L)	Surface Water EEC/(µg/L)	Cancer/DWLOC/ (µg/L)
U.S. population	0.000039	0.00017	0.00021	0.06	0.62	12

The dietary cancer risk estimate for folpet (food only) for the U.S. population is 7.2 x 10^{-8} and the cancer risk resulting from residential exposure is 3.1 x 10^{-7}. As shown in Table 6 of this unit, the DWLOC for assessing chronic (cancer) aggregate dietary risk is 12 µg/L. The SCI-GROW and FIRST chronic (cancer) EECs are less than the cancer DWLOC for folpet. Therefore, residues of folpet in drinking water will not contribute significantly to the aggregate chronic (cancer) human health risk, and thus, that the aggregate cancer risk from exposure to folpet is not of concern.

The cancer risk estimate (food only) for the U.S. population (total) is 7.2 x 10^{-8} for folpet (food exposure = 0.000039 mg/kg/day) and 1.3 x 10^{-7} for captan (food exposure = 0.000053 mg/kg/day). The EECs for assessing chronic (cancer) aggregate dietary risk for folpet are 0.06 µg/L (for ground water) and 0.62 µg/L (for surface water). The EECs for assessing chronic (cancer) aggregate dietary risk for captan are 1 µg/L (for ground water) and 4 µg/L (for surface water).

TABLE 7.—CANCER DWLOC FOR AGGREGATE EXPOSURE TO FOLPET AND CAPTAN

Population	Aggregate/Cancer Risk	Max Water/Exposure[1]/(mg/kg/day)	Ground Water EEC/ (µg/L)	Surface Water EEC/(µg/L)	Cancer/DWLOC[2]/(µg/L)
U.S. population	2.0 x 10^{-7}	0.00032	0.06 (folpet) 1 (captan)	0.62 (folpet) 4 (captan)	11

[1] Maximum Water Exposure (mg/kg/day) = Target Maximum Exposure - (Chronic Food Exposure).
[2] Cancer DWLOC (µg/L) = maximum water exposure (mg/kg/day) x body weight (kg), a 70 kg body weight and 2L water consumption were assumed. Water consumption (L) x 10^{-3} mg/µg.

The calculated DWLOC (calculated using the Q1* for captan 2.4 x 10^{-3} as this value is higher than that for folpet and results in a worst-case estimate of risk) for assessing chronic (cancer) aggregate dietary risk is 11 µg/L. The chronic (cancer) EECs are less than the EPA's level of comparison for folpet and captan residues in drinking water as a contribution to chronic (cancer) aggregate exposure. Therefore the Agency concludes with reasonable certainty that residues of folpet and captan in drinking water will not contribute significantly to the aggregate cancer human health risk from exposure to folpet and captan; and, that the aggregate exposure from folpet and captan residues in food and drinking water will not exceed the EPA's LOC for cancer risk for the U.S. population.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate gas chromotography/electron capture detector (GC/ECD) is available to enforce tolerances for folpet on plant commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *Residuemethods@epa.gov*.

B. International Residue Limits

No CODEX Maximum Residue Level (MRL) exist for folpet on hops. A German MRL exists for folpet on hops at 120 ppm.

V. Conclusion

Therefore, the tolerance for residues of folpet, in or on hop, dried cone at 120 ppm is amended to delete the footnote stating that there are no registrations for use of folpet on hops in the United States.

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–2004–0168 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 25, 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 (1900L), 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 Suite 350, 1099 14th St., NW., Washington, DC 20005. 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 (202) 564–6255.

2. *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 **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0168, 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 **ADDRESSES**. 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 issue(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 amends 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 amended 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: August 12, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.191 is amended by revising the entry for ''Hops, dried cones'' in the table in paragraph (a) as follows:

§ 180.191 Folpet; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Hop, dried cones	120
* * * * *	

* * * * *

[FR Doc. 04–19036 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0212; FRL–7369–9]

Flumioxazin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flumioxazin in or on almond, garlic, grape, onion, peppermint, pistachio, shallot, spearmint, sugarcane, and tuberous/corm vegetables (Subgroup 1C). Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 25, 2004. Objections and requests for hearings must be received on or before October 25, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket Identification (ID) number OPP–2004–0212. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., 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.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *Miller.Joanne@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected 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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, 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/*.

II. Background and Statutory Findings

In the **Federal Register** of December 31, 2002 (67 FR 79918) (FRL–7285–6), and March 17, 2004 (69 FR 12683) (FRL–7346–8), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 1F6296 and 0F6171) by Valent U.S.A. Corporation, 1333 North California Boulevard, Suite 600, Walnut Creek, CA 94596–8025 and pesticide petitions (PP 3E6777, 3E6788 and 3E6779) by Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The notices included a summary of the petitions prepared by Valent U.S.A. Corporation, the registrant, and IR-4. There were no comments received in response to the notices of filing.

The petitions requested that 40 CFR 180.568 be amended by establishing tolerances for residues of the herbicide flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione, in or on the raw agricultural commodities grape at 0.02 parts per million (ppm), almonds at 0.02 ppm, pistachios at 0.02, almond, hulls at 0.70 ppm (1F6296), sugarcane at 0.20 ppm (0F6171), peppermint, tops; and spearmint, tops at 0.04 ppm (3E6777), onion, dry bulb; garlic, bulb; and shallot, bulb at 0.02 ppm (3E6788), vegetable, tuberous and corm subgroup 1C at 0.02 ppm (3E6779). The proposed tolerances were corrected to conform to the Food and Feed Commodity Vocabulary database (*http://www.epa.gov/pesticides/foodfeed/*) to read as follows: Grape at 0.02 ppm, almond (nutmeat) at 0.02 ppm, almond (hulls) at 0.70 ppm, pistachio at 0.02 ppm, onion (dry bulb) at 0.02 ppm, garlic (bulb) at 0.02 ppm, shallot (bulb) at 0.02 ppm, tuberous/corm vegetables (Subgroup 1C) at 0.02 ppm, sugarcane (cane) at 0.20 ppm, peppermint (tops) at 0.04 ppm, and spearmint (tops) at 0.04 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish tolerances (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 tolerances for residues of flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione on grape at 0.02 ppm, almond (nutmeat) at 0.02 ppm, almond (hulls) at 0.70 ppm, pistachio at 0.02 ppm, onion (dry bulb) at 0.02 ppm, garlic (bulb) at 0.02 ppm, shallot (bulb) at 0.02 ppm, tuberous/corm vegetables (Subgroup 1C) at 0.02 ppm, sugarcane (cane) at 0.20 ppm, peppermint (tops) at 0.04 ppm, and spearmint (tops) at 0.04 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 flumioxazin are discussed in a March 31, 2004 **Federal Register** document (69 FR 16823) (FRL–7351–2).

B. Toxicological Endpoints

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

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

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional UFs deemed appropriate (RfD = NOAEL/UF). Where a special FQPA SF or the default FQPA SF 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 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). 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 flumioxazin used for human risk assessment is shown in Table 1 of this unit:

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

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–49 years of age)	NOAEL = 3 milligrams/kilogram (mg/kg)/day aRfD = 0.03 mg/kg/day	Special FQPA SF = 1 aPAD = aRfD ÷ FQPA SF = 0.03 mg/kg/day	Oral developmental and supplemental prenatal studies (rat) LOAEL = 10 mg/kg/day based on cardiovascular effects (especially ventricular septal defects in fetuses)
Acute dietary (General population including infants and children)	An endpoint attributable to a single dose (exposure) was not identified from the available studies, including the developmental toxicity studies in rats and rabbits.		
Chronic dietary (All populations)	NOAEL= 2 mg/kg/day UF = 100 cRfD = 0.02 mg/kg/day	Special FQPA SF = 1 cPAD = cRfD ÷ FQPA SF = 0.02 mg/kg/day	2–year chronic/carcinogenicity study (rat) LOAEL = 18 mg/kg/day based on increased chronic nephropathy in males and decreased hematological parameters in females (Hgb, MCV, MCH and MCHC)
Cancer (Oral, dermal, inhalation)	Not likely to be a carcinogen for humans based on the lack of carcinogenicity in a 2–year rat study, an 18-month mouse study and a battery of mutagenic studies.		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.568) for the residues of flumioxazin, in or on cotton, peanuts and soybean seed. No secondary residues are expected in meat, milk, poultry or eggs. Risk assessments were conducted by EPA to assess dietary exposures from flumioxazin 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.

In conducting the acute dietary risk assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: For the acute analyses, tolerance-level residues were assumed for all food commodities with current or proposed flumioxazin tolerances, and it was assumed that all of the crops included in the analysis were treated. Percent Crop Treated (PCT) and/or anticipated residues were not used in the acute risk assessment.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment, EPA used the DEEM-FCID™, which incorporates food consumption data 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: For the chronic analyses, tolerance-level residues were assumed for all food commodities with current or proposed flumioxazin tolerances, and it was assumed that all of the crops included in the analysis were treated. PCT and/or anticipated residues were not used in the chronic risk assessment.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for flumioxazin and its degradates (482-HA and APF) 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 flumioxazin and its degradates (482-HA and APF).

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier 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 LOC.

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 flumioxazin they are further discussed in Unit III.E.

Based on the FIRST and SCI-GROW models, the EECs of flumioxazin and its degradates (482-HA and APF) for acute exposures are estimated to be a total of 34 parts per billion (ppb) for surface water and 48 ppb for ground water. The EECs for chronic exposures are estimated to be a total of 18 ppb for surface water and 48 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).

Flumioxazin 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 flumioxazin and any other substances. Flumioxazin 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 flumioxazin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's 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 database 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 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional SF value based on the use of traditional UFs and/or special FQPA SFs, as appropriate.

2. *Prenatal and postnatal sensitivity*. Although increased prenatal and postnatal quantitative susceptibility was seen in rats, it was concluded that there is low concern and no residual uncertainties for prenatal and/or postnatal toxicity because:

i. Developmental toxicity NOAELs/LOAELs are well characterized after oral and dermal exposure.

ii. Offspring toxicity NOAEL/LOAEL are well characterized.

iii. There is a well-defined dose-response curve for the cardiovascular effects seen following oral exposure (i.e. critical period).

iv. The endpoints of concern are used for overall risk assessments for appropriate route and population subgroups.

3. *Conclusion*. There is a complete toxicity database for flumioxazin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the special 10X SF to protect infants and children should be removed. The FQPA factor is removed because developmental toxicity and offspring toxicity NOAELs/LOAELs are well characterized; there is a well-defined dose-response curve for the cardiovascular effects and the endpoints of concern are used for overall risk assessments are appropriate for the route of exposure and population subgroups.

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, 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 flumioxazin will occupy less than (<) 1% of the aPAD for females 13 to 49 years old. In addition, there is potential for acute dietary exposure to flumioxazin 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 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FLUMIOXAZIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC/ (ppb)	Ground Water EEC/ (ppb)	Acute DWLOC/ (ppb)
Females (13–49 years)	0.03	<1	34	48	890

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

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

Population Subgroup	cPAD (mg/kg/day)	% cPAD/ mg/kg//day/ (Food)	Surface Water EEC/ (ppb)	Ground Water EEC/ (ppb)	Chronic DWLOC/ (ppb)
U.S. population	0.02	<1	18	48	700
All infants (<1 year)	0.02	<1	18	48	200
Children (1–2 years)	0.02	2	18	48	200
Children (3–5 years)	0.02	2	18	48	200
Females (13–49 years)	0.02	<1	18	48	600

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

Flumioxazin 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 LOC.

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

Flumioxazin 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 LOC.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for flumioxazin on grape, almond, pistachio, onion, garlic, shallot, tuberous/corm vegetables (Subgroup 1C), sugarcane, peppermint, or spearmint.

V. Conclusion

Therefore, the tolerance is established for residues of flumioxazin, (2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione) in or on grape at 0.02 ppm, almond (nutmeat) at 0.02 ppm, almond (hulls) at 0.70 ppm, pistachio at 0.02 ppm, onion (dry bulb) at 0.02 ppm, garlic (bulb) at 0.02 ppm, shallot (bulb) at 0.02 ppm, tuberous/corm vegetables (Subgroup 1C) at 0.02 ppm, sugarcane (cane) at 0.20 ppm, peppermint (tops) at 0.04 ppm, and spearmint (tops) at 0.04 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–2004–0212 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 25, 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 (1900L), 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 Suite 350, 1099 14th St., Washington, DC 20005. 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 (202) 564–6255.

2. *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 **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0212, 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 **ADDRESSES**. 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: August 5, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.568 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.568 Flumioxazin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond (hulls)	0.70
Almond (nutmeat)	0.02
* * *	* *
Garlic (bulb)	0.02
Grape	0.02
Onion (dry bulb)	0.02
* * *	* *
Peppermint (tops)	0.04
Pistachio	0.02
Shallot (bulb)	0.02
* * *	* *
Spearmint (tops)	0.04
Sugarcane (cane)	0.20
Tuberous/corm vegetables (Subgroup 1C)	0.02

* * * * *

[FR Doc. 04–19034 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, and 101

[IB Docket No. 97–95, FCC 03–296]

Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5–38.5 GHz, 40.5–41.5 GHz and 48.2–50.2 GHz Frequency Bands; Allocation of Spectrum To Upgrade Fixed and Mobile Allocations in the 40.5–42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9–47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0–38.0 GHz and 40.0–40.5 GHz for Government Operations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document is a summary of the Second Report and Order adopted by the Commission in this proceeding. The Commission modified the band plan for the 36.0–51.4 GHz band. Specifically, the Commission made various designation and allocation changes in the 37.0–42.0 GHz band to create contiguous spectrum for both fixed-satellite services and terrestrial fixed and mobile services (wireless services), which reflects decisions made at the 2000 and 2003 World Radiocommunication Conferences. The Commission finalized the satellite and terrestrial designations required by the Commission's ''soft-segmentation'' approach and adopted service rules for satellite services, including gateway definitions and power-flux density (PFD) limits.

DATES: Effective September 24, 2004.

FOR FURTHER INFORMATION CONTACT: David Strickland, Breck Blalock, or James Ball, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order* in IB Docket No. 97–95, FCC No. 03–296, adopted November 17, 2003 and released on December 5, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–296A1.pdf*. The complete text may also be purchased from the Commission's copy contractor, Qualex International, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 863–2893, via facsimile at (202) 863–2898, or via e-mail at *qualexint@aol.com*.

Summary of Report and Order

On May 24, 2001, the Commission adopted a Further Notice of Proposed Rulemaking (66 FR 35399, July 5, 2001) in this proceeding to obtain comment on proposals to modify the band plan for the 36.0–51.4 GHz band. On December 5, 2003, the Commission released a Second Report and Order in this proceeding. In the Second Report and Order, the Commission made various designation and allocation changes in the 37.0–42.0 GHz band to create contiguous spectrum for both fixed-satellite services and terrestrial fixed and mobile services (wireless services), which reflects decisions made at the 2000 World Radiocommunication Conference (WRC–2000) in Istanbul, Turkey and the 2003 World Radiocommunication Conference (WRC–2003) in Geneva, Switzerland. The Commission finalized the satellite and terrestrial designations required by the Commission's ''soft segmentation'' approach and adopted service rules for satellite services, including gateway definitions and power-flux density (PFD) limits. The Commission will address in separate service rulemakings additional service rules for satellite and terrestrial systems' use of the designations we adopt in this item, including the precise conditions applied to the satellite PFD limits adopted in this Second Report and Order, and proposed rules to coordinate certain types of earth stations operating in the

V-band spectrum. The Commission also will address in future rulemakings the National Telecommunications and Information Administration's (NTIA's) request to delete Broadcasting-Satellite Service (BSS) from the 42.0–42.5 GHz band and to protect Radio Astronomy operations at 42.5–43.5 GHz from satellite services in adjacent downlink bands. By making these designation and allocation changes, the Commission brings certainty to systems currently operating n the 37.0–40.0 GHz portion of the spectrum and codify the concept of ''soft-segmentation,'' and allow ubiquitous deployment of fixed service and fixed satellite service operations to commence in the V-band.

Procedural Matters

Paperwork Reduction Act

This Second Report and Order does not contain a new or modified information collection.

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Further Notice of Proposed Rulemaking in IB Docket No. 97–95. The Commission sought written public comment on the Proposals in the V-band Further Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for and Objectives of the Proposed Rules

In this *Second Report and Order,* we modify the band segmentation plan governing operations in the 36.0–51.4 GHz band to reflect decisions reached at the 2000 World Radiocommunication Conference (WRC–2000) and the 2003 World Radiocommunication Conference (WRC–2003). The changes adopted in the domestic Table of Allocations seek to maximize efficient use of the radio spectrum by both satellite and terrestrial uses, with minimal changes to the existing Table. These changes will provide satellite and terrestrial operators, including small entity operators, with greater certainty about the scope of operations in this band, and should therefore provide benefits for small entity operators.

We make various designation and allocation changes in the 37.0–42.0 GHz band to create two gigahertz of contiguous spectrum for the fixed satellite services and three gigahertz for terrestrial fixed wireless services. Specifically, we:

- Redesignate the spectrum available for wireless services from the 41.0–42.0 GHz band to the 37.6–38.6 GHz band, redesignate the spectrum available for satellite uses from the 37.6–38.6 GHz band to the 41.0–42.0 GHz band, and modify parts 25 and 101 of our rules accordingly.
- Decline to adopt a Mobile-Satellite Service (MSS) designation in the 40.5–41.0 GHz band on a primary basis, and allocate MSS on a secondary basis in the 40.5–41.0 GHz band for Federal and non-Federal Government use.
- Add an additional 100 megahertz Fixed-Satellite Service (FSS) allocation in the 37.5–37.6 GHz band.
- Delete the non-Federal Government MSS allocation from the 39.5–40.0 GHz band and no longer require that non-Federal Government fixed and mobile operations protect Federal Government MSS earth stations in this band.
- Add a Government FSS allocation to the 40.5–41.0 GHz band, and require Government and commercial operators to coordinate their operations on a co-primary basis. (A service that is primary is the only service given priority status to operate in a frequency band. A service that is co-primary must share operations with other services specified as co-primary in the frequency band on a co-equal basis. A service that is secondary is allowed to use the band as long as its operations do not cause interference to any primary operations, and it must accept any interference caused by a primary service. If a secondary service operation causes interference to a primary service, the secondary service provider must eliminate the interference or cease operations. *See generally* 47 CFR § 2.105 (2002)).
- Adopt a primary non-Government FSS allocation in the 41.0–42.0 GHz band and modify the Table of Allocations in section 2.106 of our rules accordingly.
- Maintain the current 47.2–48.2 GHz allocation for exclusive commercial use, and preserve the 42.5–43.5 GHz allocation for exclusive Government use (with the exception of Radio Astronomy operations).
- Incorporate into the Commission's rules PFD limits in the 37.5–40.0 GHz band that apply during normal (free-space, clear-sky) conditions and upper bound PFD limits that may apply during rain fade conditions.
- Adopt a description of ''gateway'' for earth stations licensed in the 37.5–40.0 GHz band.

B. Legal Basis

The proposed action is taken pursuant to sections 1, 4(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304, and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Geostationary and Non-Geostationary Orbit Fixed-Satellite Service Applicants and Licensees. Regarding future satellite use of the bands that are the subject of this rulemaking, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Satellite Telecommunications. This definition provides that a small entity is one with $12.5 million or less in annual receipts. (*See* 13 CFR 121.201 (2002), North American Industry Classification System (NAICS) 517410). According to 1997 Census Bureau data (in 1997—the most recent year in which census data is available—the NAICS code for ''Satellite Telecommunications'' was 513340), there are 273 satellite communication firms with annual receipts of under $10 million. In addition, 24 firms had receipts for that year of $10 million to $24,999,990 (U.S. Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, EC97S51S–SZ, Subject Series, Establishment and Firm Size, Table 2, Employment Size of Establishments of Firms Subject to Federal Income Tax: 1997, NAICS Code 51740 (issued October 2000)). Generally, these NGSO and GSO FSS systems cost several millions of dollars to construct and operate. Therefore the NGSO and GSO FSS companies, or their parent companies, rarely qualify under this definition as a small entity. In addition, the proposed rules may affect allocations for the space research (passive) and radio astronomy services. There are no small entities affected by

this action because only Federal agencies currently make use of these services.

Terrestrial Fixed and Mobile Wireless Services. We note that the rules in this order provide spectrum for future wireless and satellite licensees and the proposal would not affect any current non-Federal Government users. Regarding future terrestrial fixed and mobile use of the subject bands, the applicable definition of small entity is the definition under the SBA rules applicable to the Cellular and Other Wireless Telecommunications industry. This definition provides that a small entity is a firm employing no more than 1,500 persons (*see* 13 CFR 121.201 (2002), NAICS Code 513322 (changed to 517410 in October 2002)). The 1997 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 cellular and other wireless telecommunications firms out of a total of 1,238 such firms that operated during 1997 had 1,000 or more employees. (U.S. Bureau of the Census, U.S. Department of Commerce, 1997 Economic Census, EC97551S–SZ, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1997, NAICS Code 513322 (issued October 2000).) While we cannot at this time know precisely which entities will ultimately be utilizing all the subject spectrum, the following services are possibilities:

Fixed Microwave Services. Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. (*See* 47 CFR 101 *et seq.* (2002) (formerly part 21 of the Commission's rules) for common carrier fixed microwave services (except Multipoint Distribution Service). Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90 (2002). Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations. Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR part 74 *et seq.* (2002). (This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.) At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operations-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. (*See* 13 CFR 121.201 (2002), NAICS code 513322 (changed to 517212 in October 2002).) The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed licensees and 61,670 licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. (*See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order,* 63 FR 6079 (February 6, 1998).) An additional size standard for ''very small businesses'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. (*See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, administrator, Small Business Administration (February 4, 1998).) The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

Local Multipoint Distribution Service. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licensees as an entity that has average gross revenues of less than $40 million in the three previous calendar years. (*See* Local Multipoint Distribution Service, *Second Report and Order,* 12 FCC Rcd 12545 (1997).) An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA approved these small business size standards in the context of LMDS auctions. (*See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Administrator, Small Business Administration (January 6, 1998).) There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

None. These changes impose no cost or reporting burdens on fixed-satellite, mobile-satellite, or broadcasting-satellite service operators. No incumbents are affected by this proposed action. The only service rule changes proposed concern power flux density limits and frequency tolerance and emission limitations, which do not have associated compliance burdens.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among

others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. (See 5 U.S.C. 603.)

In this Second Report and Order, we modify the band segmentation plan governing operations in the 36.0–51.4 GHz band to reflect decisions reached at the 2000 World Radiocommunication Conference (WRC–2000) and the 2003 World Radiocommunication Conference (WRC–2003). These changes primarily attempt to settle allocation and segmentation issues and, as a result, provide similar benefits for all entities, including small. Specifically, the changes adopted in the domestic Table of Allocations seek to maximize efficient use of the radio spectrum by both satellite and terrestrial uses, with minimal changes to the existing Table. These changes will benefit all satellite and terrestrial operators by providing satellite and terrestrial operators, including small entity operators, with greater certainty about the scope of operations in this band.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

It is ordered that, pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), parts 2, 25, and 101 of the Commission's rules are amended, as specified in the rule changes, effective September 24, 2004.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2, 25 and 101

Radio, Satellites, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 25, and 101 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise pages 76, 77, 78, and 79 of the Table of Frequency Allocations.

■ b. In the list of International Footnotes under heading I: revise footnotes 5.340, 5.547 and 5.555A; add footnotes 5.516B, 5.51H, 5.51I, and 5.554A; and remove footnotes 5.551AA and 5.551G.

■ c. In the list of United States footnotes, add footnote US382.

■ d. In the list of Federal Government footnotes, revise footnote G117.

§ 2.106 Table of Frequency Allocations.

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36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) 5.149	36-37 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263 US342		
37-37.5 FIXED MOBILE SPACE RESEARCH (space-to-Earth) 5.547	37-38 FIXED MOBILE SPACE RESEARCH (space-to-Earth)	37-37.5 FIXED MOBILE	Fixed Microwave (101)
37.5-38 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE SPACE RESEARCH (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547		37.5-38.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	Satellite Communications (25) Fixed Microwave (101)
38-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE Earth exploration-satellite (space-to-Earth) 5.547	38-38.6 FIXED MOBILE		
	38.6-39.5	38.6-39.5 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE NG175	
39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite (space-to-Earth) 5.547	39.5-40 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US382 G117	39.5-40 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE NG175 US382	
40-40.5 EARTH EXPLORATION-SATELLITE (Earth-to-space) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth)	40-40.5 EARTH EXPLORATION- SATELLITE (Earth-to-space) FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth) G117	40-40.5 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Mobile 5.547	40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B BROADCASTING BROADCASTING-SATELLITE Mobile Mobile-satellite (space-to-Earth) 5.547	40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Mobile 5.547	40.5-41 FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) US211 G117	40.5-41 FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Fixed Mobile Mobile-satellite (space-to-Earth) US211	Satellite Communications (25)
41-42.5 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B BROADCASTING BROADCASTING-SATELLITE Mobile 5.547 5.551F 5.551H 5.551I			41-42.5 US211	41-42 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE MOBILE US211	
				42-42.5 FIXED BROADCASTING BROADCASTING-SATELLITE MOBILE US211	Fixed Microwave (101)
42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149 5.547			42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile RADIO ASTRONOMY US342	42.5-43.5 RADIO ASTRONOMY US342	
43.5-47 MOBILE 5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE			43.5-45.5 MOBILE-SATELLITE (Earth-to-space) FIXED-SATELLITE (Earth-to-space) G117	43.5-45.5	

		45.5-46.9 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE 5.554		RF Devices (15)
		46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE 5.554	46.9-47 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE FIXED 5.554	
5.554				
47-47.2 AMATEUR AMATEUR-SATELLITE		47-48.2	47-47.2 AMATEUR AMATEUR-SATELLITE	Amateur (97)
47.2-47.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE 5.552A			47.2-48.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE US264	Satellite Communications (25)
47.5-47.9 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B MOBILE	47.5-47.9 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE			
47.9-48.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE 5.552A				
48.2-48.54 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A 5.555A MOBILE	48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.516B 5.552 MOBILE	48.2-50.2 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE US264		
48.54-49.44 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE 5.149 5.340 5.555				
See next page	5.149 5.340 5.555	5.555 US342		

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
49.44-50.2 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 (space-to-Earth) 5.516B 5.554A 5.555A MOBILE	See previous page for 48.2-50.2 GHz		See previous page for 48.2-50.2 GHz		See previous page for 47.2-50.2 GHz
50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340 5.555A			50.2-50.4 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246		
50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Mobile-satellite (Earth-to-space)			50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) G117	50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space)	
51.4-52.6 FIXED MOBILE 5.547 5.556			51.4-52.6 FIXED MOBILE		
52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340 5.556			52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246		
54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive) 5.556B			54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive)		
55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED 5.557A INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) 5.547 5.557			55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED US379 INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) US263 US353		
56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.558A MOBILE 5.558 SPACE RESEARCH (passive)			56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE G128 MOBILE 5.558	56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE 5.558 SPACE RESEARCH	

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International Footnotes

* * * * *

5.340 All emissions are prohibited in the following bands:

1400–1427 MHz,
2690–2700 MHz, except those provided for by No. 5.422,
10.68–10.7 GHz, except those provided for by No. 5.483,
15.35–15.4 GHz, except those provided for by No. 5.511,
23.6–24 GHz,
31.3–31.5 GHz,
31.5–31.8 GHz, in Region 2,
48.94–49.04 GHz, from airborne stations,
50.2–50.4 GHz[2],
52.6–54.25 GHz,
86–92 GHz,
100–102 GHz,
109.5–111.8 GHz,
114.25–116 GHz,
148.5–151.5 GHz,
164–167 GHz,
182–185 GHz,
190–191.8 GHz,
200–209 GHz,
226–231.5 GHz,
250–252 GHz.

[2] 5.340.1 The allocation to the earth exploration-satellite service (passive) and the space research service (passive) in the band 50.2–50.4 GHz should not impose undue constraints on the use of the adjacent bands by the primary allocated services in those bands.

* * * * *

5.516B The following bands are identified for use by high-density applications in the fixed-satellite service (HDFSS):

17.3–17.7 GHz (space-to-Earth) in Region 1
18.3–19.3 GHz (space-to-Earth) in Region 2
19.7–20.2 GHz (space-to-Earth) in all Regions
39.5–40 GHz (space-to-Earth) in Region 1
40–40.5 GHz (space-to-Earth) in all Regions
40.5–42 GHz (space-to-Earth) in Region 2
47.5–47.9 GHz (space-to-Earth) in Region 1
48.2–48.54 GHz (space-to-Earth) in Region 1
49.44–50.2 GHz (space-to-Earth) in Region 1 and
27.5–27.82 GHz (Earth-to-space) in Region 1
28.35–28.45 GHz (Earth-to-space) in Region 2
28.45–28.94 GHz (Earth-to-space) in all Regions
28.94–29.1 GHz (Earth-to-space) in Region 2 and 3
29.25–29.46 GHz (Earth-to-space) in Region 2
29.46–30 GHz (Earth-to-space) in all Regions
48.2–50.2 GHz (Earth-to-space) in Region 2

This identification does not preclude the use of these bands by other fixed-satellite service applications or by other services to which these bands are allocated on a co-primary basis and does not establish priority in these Regulations among users of the bands. Administrations should take this into account when considering regulatory provisions in relation to these bands. See Resolution 143 (WRC–03).

* * * * *

5.547 The bands 31.8–33.4 GHz, 37–40 GHz, 40.5–43.5 GHz, 51.4–52.6 GHz, 55.78–59 GHz and 64–66 GHz are available for high-density applications in the fixed service (see Resolutions 75 (WRC–2000) and 79 (WRC–2000)). Administrations should take this into account when considering regulatory provisions in relation to these bands. Because of the potential deployment of high-density applications in the fixed-satellite service in the bands 39.5–40 GHz and 40.5–42 GHz (see No. 5.516B), administrations should further take into account potential constraints to high-density applications in the fixed service, as appropriate.

* * * * *

5.551H The equivalent power flux-density (epfd) produced in the band 42.5–43.5 GHz by all space stations in any non-geostationary-satellite system in the fixed-satellite service (space-to-Earth), or in the broadcasting-satellite service (space-to-Earth) operating in the 42–42.5 GHz band, shall not exceed the following values at the site of any radio astronomy station for more than 2% of the time:

− 230 dB(W/m^2) in 1 GHz and − 246 dB(W/m^2) in any 500 kHz of the 42.5–43.5 GHz band at the site of any radio astronomy station registered as a single-dish telescope; and

− 209 dB(W/m^2) in any 500 kHz of the 42.5–43.5 GHz band at the site of any radio astronomy station registered as a very long baseline interferometry station.

These epfd values shall be evaluated using the methodology given in Recommendation ITU–R S.1586 and the reference antenna pattern and the maximum gain of an antenna in the radio astronomy service given in Recommendation ITU–R RA.1631 and shall apply over the whole sky and for elevation angles higher than the minimum operating angle θ_{min} of the radiotelescope (for which a default value of 5° should be adopted in the absence of notified information).

These values shall apply at any radio astronomy station that either:

—Was in operation prior to 5 July 2003 and has been notified to the Radiocommunication Bureau before 4 January 2004; or
—Was notified before the date of receipt of the complete Appendix 4 information for coordination or notification, as appropriate, for the space station to which the limits apply.

Other radio astronomy stations notified after these dates may seek an agreement with administrations that have authorized the space stations. In Region 2, Resolution 743 (WRC–03) shall apply. The limits in this footnote may be exceeded at the site of a radio astronomy station of any country whose administration so agreed.

5.551I The power flux-density in the band 42.5–43.5 GHz produced by any geostationary space station in the fixed-satellite service (space-to-Earth), or the broadcasting-satellite service (space-to-Earth) operating in the 42–42.5 GHz band, shall not exceed the following values at the site of any radio astronomy station:

− 137 dB(W/m^2) in 1 GHz and − 153 dB(W/m^2) in any 500 kHz of the 42.5–43.5 GHz band at the site of any radio astronomy station registered as a single-dish telescope; and

− 116 dB(W/m^2) in any 500 kHz of the 42.5–43.5 GHz band at the site of any radio astronomy station registered as a very long baseline interferometry station.

These values shall apply at the site of any radio astronomy station that either:

—Was in operation prior to 5 July 2003 and has been notified to the Radiocommunication Bureau before 4 January 2004; or
—Was notified before the date of receipt of the complete Appendix 4 information for coordination or notification, as appropriate, for the space station to which the limits apply.

Other radio astronomy stations notified after these dates may seek an agreement with administrations that have authorized the space stations. In Region 2, Resolution 743 (WRC–03) shall apply. The limits in this footnote may be exceeded at the site of a radio astronomy station of any country whose administration so agreed.

* * * * *

5.554A The use of the bands 47.5–47.9 GHz, 48.2–48.54 GHz and 49.44–50.2 GHz by the fixed-satellite service (space-to-Earth) is limited to geostationary satellites.

* * * * *

5.555A The power flux-density in the band 48.94–49.04 GHz produced by any geostationary space station in the fixed-satellite service (space-to-Earth) operating in the bands 48.2–48.54 GHz and 49.44–50.2 GHz shall not exceed − 151.8 dB(W/m^2) in any 500 kHz band at the site of any radio astronomy station.

* * * * *

United States (US) Footnotes

* * * * *

US382 In the band 39.5–40 GHz, Federal Government earth stations in the mobile-satellite service (space-to-Earth) shall not claim protection from non-Federal Government stations in the fixed and mobile services. ITU Radio Regulation No. 5.43A does not apply.

* * * * *

Government (G) Footnotes

* * * * *

G117 In the bands 7.25–7.75 GHz, 7.9–8.4 GHz, 17.8–21.2 GHz, 30–31 GHz, 33–36 GHz, 39.5–41 GHz, 43.5–45.5 GHz and 50.4–51.4 GHz, the Government fixed-satellite and mobile-satellite services are limited to military systems.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303, 309, 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 4. Section 25.202 is amended by adding two entries in numerical order, revising an entry, and adding two

footnotes to table following paragraph (a)(1) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1)* * *

Space-to-earth (GHz)	Earth-to-space (GHz)
* * * * *	
18.58–18.8 [6, 10, 11]	[1] 47.2–50.2
37.5–40 [15, 16]	
* * * * *	
40–42 [16]	
* * * * *	

* * * * *

[15] Use of this band by the fixed-satellite service is limited to ''gateway'' earth station operations, provided the licensee under this Part obtains a license under Part 101 of this Chapter or an agreement from a Part 101 licensee for the area in which an earth station is to be located. Satellite earth station facilities in this band may not be ubiquitously deployed and may not be used to serve individual consumers.

[16] The band 37.5–40.0 GHz is designated as being available for use by the fixed and mobile services and the band 40.0–42.0 GHz is designated as being available for use by the fixed-satellite service.

* * * * *

■ 5. Section 25.208 is amended by adding paragraphs (p), (q), (r), (s) and (t) to read as follows:

§ 25.208 Power flux-density limits.

* * * * *

(p) In the band 37.5–40.0 GHz, the power flux-density at the Earth's surface produced by emissions from a geostationary space station for all methods of modulation shall not exceed the following values.

(1) This limit relates to the power flux-density which would be obtained under assumed free space conditions (that is, when no allowance is made for propogation impairments such as rain-fade):

− 139 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

− 139 + 4/3 (δ − 5) dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 20 degrees above the horizontal plane; and

− 119 + 0.4 (δ − 20) dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 20 and 25 degrees above the horizontal plane;

− 117 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane;

(2) This limit relates to the maximum power flux-density which would be obtained anywhere on the surface of the Earth during periods when FSS system raises power to compensate for rain-fade conditions at the FSS Earth station:

− 127 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

− 127 + 4/3 (δ − 5) dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 20 degrees above the horizontal plane; and

− 107 + 0.4 (δ − 20) dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 20 and 25 degrees above the horizontal plane;

− 105 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

Note to Paragraph (p): The conditions under which satellites may exceed the power flux-density limits for normal free space propagation described in paragraph (p)(1) to compensate for the effects of rain fading are under study and have therefore not yet been defined. Such conditions and the extent to which these limits can be exceeded will be the subject of a further rulemaking by the Commission on the satellite service rules.

(q) In the band 37.5–40.0 GHz, the power flux-density at the Earth's surface produced by emissions from a non-geostationary space station for all methods of modulation shall not exceed the following values:

(1) This limit relates to the power flux-density which would be obtained under assumed free space conditions (that is, when no allowance is made for propogation impairments such as rain-fade):

− 132 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

− 132 + 0.75 (δ − 5) dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 25 degrees above the horizontal plane; and

− 117 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane;

(2) This limit relates to the maximum power flux-density which would be obtained anywhere on the surface of the Earth during periods when FSS system raises power to compensate for rain-fade conditions at the FSS Earth station:

− 120 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

− 120 + 0.75 (δ − 5) dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 25 degrees above the horizontal plane; and

− 105 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

Note to Paragraph (q): The conditions under which satellites may exceed these power flux-density limits for normal free space propagation described in paragraph (q)(1) to compensate for the effects of rain fading are under study and have therefore not yet been defined. Such conditions and the extent to which these limits can be exceeded will be the subject of a further rulemaking by the Commission on the satellite service rules.

(r) In the band 40.04 0.5 GHz, the power flux-density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

− 115 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

− 115 + 0.5 (δ − 5) dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 25 degrees above the horizontal plane; and

− 105 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane;

Note to paragraph (r): These limits relate to the power flux-density that would be obtained under assumed free-space propagation conditions.

(s) In the band 40.5–42.0 GHz, the power flux density at the Earth's surface produced by emissions from a non-geostationary space station for all conditions and for all methods of modulation shall not exceed the following values:

− 115 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

− 115 + 0.5 (δ − 5) dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 25 degrees above the horizontal plane; and

− 105 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane;

Note to paragraph (s): These limits relate to the power flux density that would be obtained under assumed free-space propagation conditions.

(t) In the band 40.5–42.0 GHz, the power flux-density at the Earth's surface produced by emissions from a geostationary space station for all conditions and for all methods of modulation shall not exceed the following values:

− 120 dB(W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane;

− 120 + (δ − 5) dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 5 and 15 degrees above the horizontal plane;

− 110 + 0.5 (δ − 15) dB(W/m^2) in any 1 MHz band for angles of arrival δ (in degrees) between 15 and 25 degrees above the horizontal plane; and

− 105 dB(W/m^2) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane;

Note to paragraph (t): These limits relate to the power flux-density that would be obtained under assumed free-space propagation conditions.

PART 101—FIXED MICROWAVE SERVICES

■ 6. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 7. Section 101.147(a) is amended by removing the entry for ''38,600–40,000 MHz'' and by adding in its place the following entries and note 32 to read as follows:

§ 101.147 Frequency assignments.

(a) Frequencies in the following bands are available for assignment for fixed microwave services.

* * * * *

37,000–40,000 MHz (4)(32)
42,000–42,500 MHz

Notes

* * * * *

(32) Frequencies in this band are shared with stations in the fixed-satellite service, subject to the conditions specified in footnote 15 of § 25.202(a)(1) of this chapter, see 47 CFR 47 25.202(a)(1) n.16.

* * * * *

[FR Doc. 04–18464 Filed 8–24–04; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub-No. 4)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2002 New Fees; Corrections

AGENCY: Surface Transportation Board, Transportation.

ACTION: Correcting amendments.

SUMMARY: The Surface Transportation Board published a document in the **Federal Register** on March 29, 2004 (69 FR 16173), amending the Board's fee regulations. The document inadvertently failed to: (1) Use correct terms of art to describe the fee item at section 1002.2(f)(56)(v); and (2) include all of the technical editing instructions needed by Federal Register staff to accurately revise sections 1002.2(f)(98), (100), and (101). This document corrects the final rules by revising these sections.

DATES: *Effective Date:* These rules are effective on August 25, 2004.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan, (202) 565–1727.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: These corrections amend the Board's fee regulations.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

■ 49 CFR part 1002 is corrected by making the following correcting amendments:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

■ 2. In § 1002.2(f), sections (56), (98), (100) and (101) are revised as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1)	$62,100
(ii) A formal complaint involving rail maximum rates filed under the small rate case procedures	150
(iii) All other formal complaints (except competitive access complaints)	6,100
(iv) Competitive access complaints	150
(v) A request for an order compelling a rail carrier to establish a common carrier rate	200
* * * * * * *	
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that:	
(i) Does not require a **Federal Register** notice:	
(a) Set cost portion	100
(b) Sliding cost portion	[1] 32
(ii) Does require a **Federal Register** notice:	
(a) Set cost portion	300
(b) Sliding cost portion	[1] 32
* * * * * * *	
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	50
(ii) Updated URCS PC version Phase III cost file—per year	[2] 25
(iii) Public requests for *Source Codes* to the PC version URCS Phase III	100
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—per year	[2] 250
(ii) Waybill—Surface Transportation Board or State proceedings on R-CD—per year	[2] 500
(iii) User Guide for latest available Carload Waybill Sample	50
(iv) Specialized programming for Waybill requests to the Board	[3] 76
* * * * * * *	

[1] Per party.
[2] Per year.
[3] Per hour.

Decided: August 18, 2004.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 04–19449 Filed 8–24–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 081804A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

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

ACTION: Closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig gear (other gears) in the Eastern Aleutian District (Statistical Area 541) and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Atka mackerel in these areas. NMFS is also announcing the opening and closure dates of the first and second directed fisheries within the harvest limit area (HLA) in Statistical Areas 542 and 543. These actions are necessary to prevent exceeding the HLA limits established for the Central (statistical area 542) and Western (statistical area 543) Aleutian Districts pursuant to the 2004 Atka mackerel TAC.

DATES: Prohibition of directed fishing for Atka mackerel with other gears in the Eastern Aleutian District and the Bering Sea subarea: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2004, until 2400 hrs, December 31, 2004. The first directed fisheries in the HLA in area 542 and area 543 are open from 1200 hrs, A.l.t., September 3, 2004, until 1200 hrs, A.l.t., September 11, 2004. The second directed fisheries in the HLA in area 542 and area 543 open from 1200 hrs, A.l.t., September 13, 2004, until 1200 hrs, A.l.t., September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The portion of the Atka mackerel TAC allocated to other gears in the Eastern Aleutian District and the Bering Sea subarea is 10,293 metric tons (mt) as established by the 2004 Harvest Specifications for Groundfish (69 FR 9242, February 27, 2004). See § 679.20(c)(3)(iii) and 679.20(a)(8)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC for Atka mackerel allocated to other gears in the Eastern Aleutian District and the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,293 mt, and is setting aside the remaining 7,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI by vessels using other gears.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543, 48 hours after the closure of the area 541 Atka mackerel directed fishery. The Regional Administrator has also established the opening date for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either 542 or 543. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the **DATES** section of this notice.

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS (69 FR 51014, August 17, 2004).

In accordance with § 679.20(a)(8)(ii)(C)(1), the HLA limit of the TAC in areas 542 and 543 are 5,733 mt and 8,630 mt, respectively. Based on those limits and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543, the harvest limits for the HLA directed fishery in areas 542 and 543 are as follows: 3,185 mt for the first directed fishery in area 542, 4,315 mt for the first directed fishery in area 543, 2,548 mt for the second directed fishery in area 542, and 4,315 mt for the second directed fishery in area 543. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has establish the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 on the dates and times listed under the **DATES** section of this notice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay both the closure of the Atka mackerel fishery by other gears in the Eastern Aleutian District and the Bering Sea subarea and the opening and closures of the fisheries for the HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the 2004 Atka mackerel TAC.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 19, 2004,

Alan D. Risenhoover,

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

[FR Doc. 04–19467 Filed 8–20–04; 3:05 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 164
Wednesday, August 25, 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.

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 360

[Docket No. 040305083–4083–01]

RIN 0625–AA64

Steel Import Monitoring and Analysis System

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

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Department is seeking suggestions on whether to extend the Steel Import Monitoring and Analysis (SIMA) system and whether, and if so how, to improve SIMA, while minimizing any impediments to international commerce.

DATES: Written comments and electronic files must be received on or before 5 p.m. eastern daylight savings time September 24, 2004. Submitters are encouraged to limit written comments (original and five copies) to ten pages or less.

ADDRESSES: Written comments should be sent to Kelly Parkhill, Director for Industry Support and Analysis, Import Administration, Room 3713, Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230. Electronic files should state ''Comments on Advanced Notice of Proposed Rule Making'' in the subject line and be sent to *steel_license@ita.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill (202) 482–3791; Julie Al-Saadawi (202) 482–1930.

SUPPLEMENTARY INFORMATION: On December 31, 2002, the Department of Commerce published its final rule on the implementation of the current steel import monitoring system (67 FR 79845). This system was initiated in connection with the implementation of safeguard measures with respect to certain steel products pursuant to Section 203 of the Trade Act of 1974 (67 FR 10593). The effective date of the system was February 1, 2003. On December 4, 2003, the President issued a proclamation that terminated the safeguard measures, but also directed the Secretary of Commerce to continue the system until the earlier of March 21, 2005, or such time as the Secretary of Commerce establishes a replacement program. On December 9, 2003, the Department of Commerce published a notice that the system would continue in effect as described in the Proclamation (68 FR 68594).

The purpose of the Steel Import Monitoring and Analysis (SIMA) system is to provide steel producers, steel consumers, importers, and the general public with accurate and timely information on imports of certain steel products. Currently, the SIMA system requires licenses for imports of certain steel products that were formerly covered under the President's safeguard action. Details of the current system can be found in the final rule published on December 31, 2002 (67 FR 79845).

In this notice, the Department of Commerce solicits comment from the public on the need to continue the current system beyond its current expiration date of March 21, 2005, if the Secretary of Commerce does not establish a replacement program prior to that date.

On April 1, 2004, in a joint letter cosigned by top executives from 38 steel producers, and in subsequent meetings with the Administration, the American Iron and Steel Institute (AISI) and the Steel Manufacturers Association (SMA) urged the Department to implement an enhanced replacement program for the current system. At a minimum, AISI and SMA requested that the Department take the initial steps necessary to begin any required rule making process by publishing a request for public comment in the **Federal Register**. Interest in the opportunity to provide public comment has also been expressed to the Department informally by a number of other interested parties including steel importers, distributors, service centers and foreign steel producers.

In this notice, the Department of Commerce is also requesting comments on whether to introduce possible enhancements to the system. While we welcome suggestions for improving the system, we would particularly appreciate public comments on the following items.

Product Coverage. Commerce is considering whether it should modify the scope of the current system to either cover additional products or remove certain products from licensing and monitoring.

Timing of License Application. Currently, the license is required at the time of entry summary, although one may apply for a license up to two months prior to the expected date of importation. We encourage interested persons to comment on both the effectiveness and the burden of the current system as well as any alternative options that they believe may be more appropriate.

Possible Modifications to the Import Monitor. We encourage interested persons to submit comments or suggestions on changes to the import monitor (*e.g.*, presentation of more detailed product information, summary information by Customs District, inclusion of trend analysis).

Further information may be obtained by viewing the current system at Import Administration's SIMA Web site (*http://ia.ita.doc.gov/steel/license/*). Interested persons are encouraged to visit the website and to test the system. For assistance and a temporary user code, please contact the steel licensing team at (202) 482–2105.

All comments responding to this notice will be a matter of public record and available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days.

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

Dated: August 18, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–19490 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106679–04]

RIN 1545–BD18

Interest-Only REMIC Regular Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document describes and explains rules that the IRS and Treasury are considering and may propose in a notice of proposed rulemaking regarding the proper timing of income or deduction attributable to an interest-only regular interest in a Real Estate Mortgage Investment Conduit (REMIC). This document also invites comments from the public regarding these rules and other alternative rules. All materials submitted will be available for public inspection and copying.

DATES: Written or electronic comments must be received by November 23, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–106679–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–106679–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–106679–04).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, Treena Garrett (202) 622–7180; concerning the proposals, Dale S. Collinson, (202) 622–3900 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Tax Reform Act of 1986 (100 Stat. 2085) (1986–3 C.B. Vol. 1), created a new tax entity, the Real Estate Mortgage Investment Conduit (REMIC), that was designed to be the exclusive vehicle for the issuance of multi-class mortgage-backed securities. A REMIC may issue one or more classes of regular interests and must issue a single class of residual interest. Section 860B(a) of the Internal Revenue Code (Code) requires that a regular interest be treated as a debt instrument whether or not the interest would qualify as a debt instrument under general tax principles. The holders of the residual interest are required to take into account their proportionate share of the REMIC's taxable income or net loss.

Prior to 1988, the holder of a REMIC regular interest was required to be entitled to a specified principal amount plus interest at a fixed or variable rate. The Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342) (1988 C.B. 1), permits the holder of a REMIC regular interest to receive interest that consists of a specified portion of the interest payments on qualified mortgages if the portion does not vary during the period the regular interest is outstanding. Section 860G(a)(1)(B)(ii). The expanded definition of REMIC regular interest has allowed for the issuance of interest-only REMIC regular interests (REMIC IOs).

A REMIC IO generally provides for a nominal (or zero) specified principal amount and stated interest consisting of a specified portion of the interest payments on mortgages held by the REMIC.[1] Section 860B(a) provides that a REMIC regular interest is taxed as a debt instrument. Nevertheless, a REMIC IO differs from a traditional debt instrument in that the aggregate of the amounts received by the holder of a REMIC IO may be less than the amount for which the instrument was issued. This may occur if the underlying mortgages are prepaid at an unexpectedly rapid rate. In that case, the amounts of interest paid on these mortgages will be less than expected, and the amounts payable to the holder of the REMIC IO will be correspondingly reduced. As a result, REMIC IOs present novel and difficult questions in the application of tax rules that were designed primarily to account for instruments that qualify as debt under traditional tax principles.

Section 1275(d) authorizes regulations to modify the tax treatment prescribed by sections 163(e) and 1271 through 1275 (relating to original issue discount (OID)) if the statutory tax treatment does not carry out the purposes of those sections. The IRS and Treasury are considering whether to issue regulations, including regulations under the authority of section 1275(d), with respect to the tax treatment of REMIC IOs for issuers and initial- and secondary-market purchasers. This advance notice of proposed rulemaking sets out additional background information, including summary descriptions of possible approaches to the problems described below, and requests public comment.

Current Tax Treatment of REMIC IOs

As noted, the terms of a REMIC IO generally provide both for stated interest consisting of a specified portion of the interest payments on mortgages held by the REMIC and also may provide for a nominal amount of specified principal. The tax rules currently applicable to a REMIC IO depend on whether the stated interest is treated as consisting entirely of interest or as being, in part, a return of the proceeds for which the instrument was issued.

Some taxpayers believe that, if the stated interest is respected as interest, it generally is qualified stated interest (QSI) and so is not part of the stated redemption price at maturity (SRPM). As a result, because the specified principal due on the REMIC IO is, at most, nominal, a holder generally will have paid more than the amount payable when the REMIC IO matures, and thus there will be bond premium. On the other hand, if the interest payments are recast as, in part, a return of the proceeds for which the REMIC IO was issued, the portions so recast are included in the SRPM, and the instrument is issued with OID.

Glick v. *United States,* 96 F. Supp. 2d 850 (S.D. Ind. 2000), weighed these competing analyses of a REMIC IO. The instrument at issue in the case had been issued for a little over $12 million. The terms of the instrument provided both for specified principal of $362,000, which was based on principal payments on the underlying mortgages, and for much larger expected amounts of stated interest, which were linked to, and contingent upon, interest payments on the underlying mortgages.

Given the terms of the mortgages and the rate at which the mortgagors were, in the aggregate, expected to prepay their mortgages, the prospectus estimated total future cash flows under the REMIC IO of over $14 million. Basing its computation on the specified principal amount, the prospectus identified the resulting estimated interest rate on the REMIC IO as being 1006.7 percent. On the other hand, the prospectus further disclosed that, if a yield computation were to be based on the taxpayer's purchase price of over $12 million, the anticipated yield to maturity was just under 8 percent.

[1] The terms of a REMIC may provide that the specified principal amount of a REMIC IO is zero. Although section 860G(a)(1)(A) requires a regular interest ''unconditionally [to] entitle[] the holder to receive a specified principal amount (or other similar amount),'' § 1.860G–1(a)(2)(iv) states, ''If an interest in a REMIC consists of a specified portion of the interest payments on the REMIC's qualified mortgages, no minimum specified principal amount need be assigned to that interest.''

Because of falling interest rates, the mortgages underlying the instrument were prepaid at an extremely fast rate, and the taxpayer recovered less than two thirds of the original investment.

The Government argued that the instrument was issued at a discount and that the taxpayer's loss on the instrument was capital and would be recognized only in the year the instrument was retired. The taxpayer, on the other hand, claimed that the instrument was acquired at a premium and that ordinary deductions were allowable under section 171 during the entire period that the taxpayer held the instrument. Explaining that it had resolved the question by ''[e]xamining the economic reality of the transaction,'' 96 F. Supp. 2d at 867, the court issued summary judgment for the Government.

Original Issue Discount

REMIC regular interests are among the debt instruments for which the accrual of OID is calculated taking prepayments into account. This is accomplished by using a method commonly known as the prepayment assumption catch-up (PAC) method, which is provided in section 1272(a)(6). Under this method, it is necessary to estimate first the rate at which any outstanding principal on the underlying mortgages will be prepaid and, then, the yield to maturity of the instrument. These estimates remain constant in all PAC method computations throughout the life of the instrument.

In each accrual period, the daily accruals of OID are equal to the ratable portion of the *excess* (if any) of the sum of (1) the present value of the remaining payments under the debt instrument as of the close of the period (end-of-period present value) and (2) the payments during the accrual period that are included in the SRPM (accrual-period SRPM receipts), *over* the adjusted issue price of the debt instrument at the beginning of the period.[2]

The end-of-period present value is calculated using the two estimates referred to above. First, the amount and time of the remaining payments are determined on the basis of both the specified principal actually outstanding at the end of the accrual period (taking into account any prepayments occurring before the close of the accrual period) and the previously estimated, static assumption about the rate at which any outstanding principal will be prepaid. Second, the present value of these remaining payments is determined by discounting them at the previously estimated original yield to maturity.

A holder of an OID debt instrument includes in gross income the sum of the daily portions of the OID for each day during the taxable year on which it holds the debt instrument. An issuer's interest deduction for OID accruals is computed in a similar fashion.

In the case of a traditional debt instrument that is issued with OID or a REMIC regular interest that is issued for less than its specified principal amount, prepayments increase the instrument's yield to maturity. Failure to anticipate prepayments would result in uneconomic deferred accrual of OID inclusions, and the holder would recognize capital gains when the instrument is finally sold or retired. To prevent such uneconomic deferral of OID inclusions, the PAC method, in each period, recognizes more OID than would be recognized if no anticipated prepayments were taken into account. However, the PAC method may result in uneconomic acceleration of OID accruals in certain circumstances.

When section 1272(a)(6) became law, an instrument subject to it generally provided for payments of a fixed amount of specified principal, plus payments of QSI, which were based on the amount of principal still outstanding. If the issue price of the instrument was less than the specified principal, that difference resulted in a fixed amount of OID, which had to be accrued over the life of the instrument.

For such an instrument, if actual prepayments occur at a slower rate than the original estimate, OID will be accrued more rapidly under the PAC method than the actual prepayment rate would justify. If prepayments are particularly slow, the OID remaining to be received at the end of a period may be greater than the excess of the original OID on the instrument over the amount of the OID that had been accrued in prior periods. As a result, the amount of OID for the current accrual period under the formula in the PAC method may be a negative number (Negative OID).[3] This occurs if the adjusted issue price at the beginning of an accrual period (which reflects prior OID accruals) exceeds the sum of (1) the end-of-period present value and (2) the accrual-period SRPM receipts.

Because the amount of OID to be received over the life of the instrument is fixed, and thus the OID that had been previously accrued will be received eventually, the premature accruals may be addressed by a period of nonaccrual of OID. An alternative approach would be to reverse the premature accruals by recognizing Negative OID in the current period and then to accrue the OID again later.

In enacting the PAC formula, Congress expressed its intent that the rules implementing the PAC method would use a period of nonaccrual to correct possible premature accruals and would not accrue and recognize Negative OID.

> The conferees intend that in no circumstances would the method of accruing OID prescribed by the conference agreement allow for negative amounts of OID to be attributed to any accrual period. If the use of the present value computations prescribed by the conference agreement produce[s] such a result for an accrual period, the conferees intend that the amount of OID attributable to such accrual period would be treated as zero, and the computation of OID for the following accrual period would be made as if such following accrual period and the preceding accrual period were a single accrual period.

2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–239, 1986–3 (Vol. 4) C.B. 239. The IRS and Treasury understand that taxpayers generally comply with this intent not only for ordinary REMIC regular interests but also for REMIC IOs.

The quoted expression of Congressional intent occurred before the 1988 amendment permitting REMIC IOs. In the case of a REMIC regular interest that resembles a traditional debt instrument (such as the regular interests that existed before the 1988 amendment), a Negative OID computation is evidence that unexpectedly *slow* prepayments may have caused OID to accrue more rapidly than, in hindsight, it should have. In such a situation, disallowing Negative OID causes a timing issue. To the extent that OID has been overaccrued, the accrual period is extended until the computation for the extended accrual period produces a positive result. This future positive result of the computation has to occur eventually as principal on the debt instrument is repaid.

By contrast, in the case of a REMIC IO, a Negative OID computation may occur because unexpectedly *rapid* prepayments reduce the amount of OID that will ever be received or paid under the terms of the instrument. Rather than the right amount of OID being accrued too fast, the wrong amount has been accrued. In the case of a REMIC IO, therefore, the prohibition against Negative OID may result in denying the holder current recognition of an overall actual loss that will not be reversed in

[2] For each period, interest income or expense with respect to the REMIC regular interest also includes accruals of QSI.

[3] In 1986 Congress expressed its intent that Negative OID would not be currently recognized. For that reason, the term is used here to refer to a negative result for the computation required by the formula in the PAC method, not to an amount that is necessarily recognized for tax purposes.

future periods and may only be realized upon the sale or maturity of the REMIC IO.

There is also a corresponding distortion to the net income or net loss of the REMIC (and thus to the income or net loss of the holder of the residual interest). Even if one or more holders of the REMIC IOs sell their interests and recognize losses that correct their own overaccrual of OID income, nothing corrects the REMIC's overaccrual of OID deductions until the instrument is finally retired. This asymmetry may result in an understatement of the overall tax base attributable to income from mortgages held in REMICs (the total amount taxable to holders of REMIC regular interests and REMIC residual interests).

Market Discount

Section 1276(b)(3) provides that the accrual of market discount on a debt instrument, the principal of which may be paid in installments, shall be determined under regulations. Regulations have not yet been issued.

The legislative history of the Tax Reform Act of 1986, however, states that, until regulations are issued, if a debt instrument is issued with OID and the principal of the instrument may be paid in two or more installments, then holders of the instrument may elect to accrue market discount for the instrument either on a constant yield basis or in proportion to the OID accruals on the instrument. Under the latter method, the amount of market discount that accrues during an accrual period is determined by multiplying the total remaining amount of market discount on the instrument as of the beginning of the period by a fraction, the numerator of which is the amount of OID for the period and the denominator of which is the total remaining OID at the beginning of the period.[4] See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–842 (1986), 1986–3 (Vol. 4) C.B. 842. The IRS and Treasury understand that, under current practice, during any period for which the PAC method produces Negative OID, the numerator of the fraction is treated as zero, and no market discount is accrued. In some cases, this practice may uneconomically defer recognition of market discount.

If the rules in section 1272(a)(6) apply to a debt instrument (without regard to whether the instrument is issued with OID), this legislative history indicates that accruals of market discount on the instrument are to be determined using the same prepayment assumption as that used under section 1272(a)(6) (whether or not the taxpayer elects under section 1276(b)(2) to accrue market discount on a constant-yield basis). See *id.*

The IRS and Treasury are aware of several possible methods, discussed below, for addressing the foregoing problems.

Instruments to Which New Rules Might Apply

Because of the range of instruments to which section 1272(a)(6) applies and the breadth of the new accounting methods about which comment is being requested, any new method might not necessarily be limited to REMIC IOs. For example, a new method might apply to interest-only strips from fixed investment mortgage trusts. In addition, a new method might apply to all instruments that provide for disproportionately high interest payments (as defined in § 1.860G–1(b)(5)). Under this approach, the new rules would apply to REMIC regular interests whose issue price exceeds 125% of the specified principal amount and to similar non-REMIC interests.

Proposals Based on Existing Rules for Debt

PAC Method Without Prohibition on Recognizing Negative OID

Although the PAC method may sometimes fail to clearly reflect the income of the holder or the issuer of a REMIC IO, the method is not without merit. The method is specifically designed to deal with debt instruments that are subject to prepayments, like traditional REMIC regular interests. Under the PAC method, if loans are actually prepaid faster than expected, the projected future cash flows are adjusted immediately to more accurately reflect income. To a large extent, the problems arising from the application of the PAC method to REMIC IOs arise from the prohibition against taking Negative OID into account.

Because REMIC IOs did not exist when the 1986 legislative history discussing Negative OID was drafted, that discussion related to a Negative OID computation that would indicate that the affected taxpayers had accrued some OID too soon, rather than that they had accrued OID that would never be paid or received. Congress might have articulated a different intent concerning Negative OID if it had addressed the issue once REMIC IOs were permitted.

Accordingly, the IRS and Treasury are considering whether to propose a regulation that would follow the section 1272(a)(6) formula in the current PAC method, except that the regulation would specifically allow holders of regular interests to accrue Negative OID deductions and would require the REMIC (and thus the holder of the REMIC residual interest) to accrue and recognize income from Negative OID.

The considerations supporting recognition of Negative OID by initial purchasers may not apply with equal force to secondary-market purchasers. Secondary market prices are likely to reflect both prepayment history and revised expectations regarding future prepayments, with the result that the Negative OID deduction that might be appropriate for an initial purchaser may exceed any actual economic loss sustained by a particular secondary-market purchaser. The secondary-market purchaser's depressed purchase price, however, is likely to result in a substantial amount of market discount. See section 1278(a)(2). The rules for accruing Negative OID and market discount will have to be coordinated to produce a net result that is economically sensible.

Accordingly, it may be appropriate either to develop explicit rules to effect this coordination or to limit recognition of Negative OID in the case of secondary-market purchasers. For example, recognition of accrued Negative OID might be limited to the aggregate of amounts that the secondary-market holder previously included in income as accrued OID or accrued market discount. However, in the case of a secondary-market holder who has suffered a real economic loss on a REMIC IO, such a limitation could uneconomically defer recognition of that loss.

Moreover, if a limitation on the allowance of Negative OID is applied to secondary-market purchasers, perhaps a similar limitation for initial purchasers will be needed to avoid disparate treatment of similarly situated holders (for example, initial purchasers and secondary-market purchasers that purchase shortly after original issuance at a price substantially the same as the issue price). However, such a limitation would also perpetuate many of the problems previously described.

Any rule recognizing Negative OID would have to deal with a variety of collateral consequences, such as adjustments to the instrument's adjusted issue price and the holder's basis in the instrument to reflect any deduction for

[4] If an instrument that provides for two or more principal payments is issued without OID, Congress intended for market discount to be accrued according to the same rule, but with stated interest playing the role of OID. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–842 (1986), 1986–3 (Vol. 4) C.B. 842.

Negative OID. Comments are requested concerning both the range of collateral consequences of recognizing Negative OID and the ways in which these consequences should be dealt with.

Allowing Section 166 Bad Debt Deduction

Another way to more clearly reflect the income of holders of REMIC IOs would be to issue regulations under section 166 (which concerns deductions for bad debts). These rules might both determine when (prior to realization) a holder has sustained an economic loss and also allow a deduction for the loss under section 166.[5] Section 166(a) provides a deduction for any debt that becomes wholly or partially worthless during the taxable year. Indeed, some holders of REMIC IOs have claimed deductions for partial worthlessness under section 166(a)(2) and § 1.166–3. The rules for determining worthlessness and partial worthlessness, however, were developed with reference to debts that become worthless or partially worthless because of the issuer's anticipated failure ever to make required payments, not because certain contingencies (such as rapid prepayments) have reduced the amounts required to be paid. Thus the existing regulations under section 166 focus on whether a debt instrument is uncollectible and cannot be fully satisfied through foreclosure on collateral. See, for example, §§ 1.166–2 and 1.166–6. By contrast, the existence of Negative OID for a REMIC IO is evidence that the amounts contractually owed under the terms of the instrument are being reduced, not that the holder cannot collect whatever amounts are so owed.

Comments are invited regarding (1) whether, in the absence of any default by the issuer, the policy underlying the allowance of a deduction for worthlessness and partial worthlessness should be extended to a change in the amount that the issuer is required to pay, and (2) whether any rule allowing a deduction under section 166 can be extended to, or combined with, rules respecting corresponding income inclusions for REMICs and the timing of the inclusions.

Alternative Proposal Specific to REMIC IOs and Similar Instruments

The foregoing discussion attempts to provide a method for recognizing interest income and deduction from a REMIC IO by altering an existing method applicable to traditional debt instruments. Although it may be possible to alter an existing method, doing so is difficult because existing methods are designed to apply to debt and a REMIC IO is unlike most debt. Furthermore, as previously indicated, altering an existing method often leads to collateral problems that must be addressed. Therefore, an alternative method created especially for REMIC IOs, and similar instruments, may better reflect the income and deductions for these instruments.

Economically, a holder of a REMIC IO (like other investors) has invested cash in an instrument and expects to receive cash flows from that investment. What is distinctive about a REMIC IO is that the amount and duration of the cash flows are unknown at the time of making the investment. Given the economics of the REMIC IO, a method for distinguishing between receipt of income and recovery of the amount originally invested could be based on the projected (but uncertain) cash flows under the instrument and not on the expectation of a fixed return. The following method attempts to achieve that objective.

First, the holder of a REMIC IO would include payments made on the REMIC IO in income as they are received. The holder would then be allowed an offset to any payments included in income for the period. The offset would be equal to an amount that bears the same ratio to the investment as the payments for the period bears to the total expected payments (based on a prepayment speed assumption). The total expected payments would be calculated each period, taking into account both an updated prepayment-speed assumption and any payments made on the REMIC IO. For this purpose, the investment is the total investment cost (*i.e.*, the issue price).

$$\text{Offset Formula: Offset} = \text{Investment} \times \frac{\text{Payments for period}}{\text{Total expected payments}}$$

At the maturity of the IO, and perhaps at earlier times, a look-back regime may be appropriate to correct any under-or over-accrual of interest. See section 167(g)(2).

For an example of this method, see the appendix.

Comments are requested on two aspects of this IO-specific method in particular. First, can a variation of the method be applied to determine appropriate interest deductions for the REMIC? Second, in the typical REMIC IO, cash-flows start high and then decline to zero. For these instruments, the new method may clearly reflect income. One of the method's weaknesses, however, is that, unlike OID accrual generally, the method does not accrue OID prior to the receipt of the cash representing the OID. An issue exists as to what regime should apply if the application of existing regulations to tiered structures produces REMIC IOs the cash flows on which are not expected to begin until well after the issue date.

Secondary-Market Purchasers

Unlike initial purchasers, taxpayers who acquire REMIC regular interests subsequent to issue may have to take into account not merely accruals of OID but a combination of OID and market discount or a combination of OID and acquisition premium. As discussed above, the issues concerning OID accruals and the possible recognition of Negative OID require separate consideration with respect to secondary-market acquisitions.

The IRS and Treasury are considering alternative rules for the accrual of market discount attributable to REMIC IOs. One possible rule is to require accruals under a formula similar to the PAC method, including the use of a prepayment assumption and discount rate that remain static. However, instead of the projected prepayment speed and the projected yield to maturity being fixed as of the date on which the REMIC issues all of its regular interests, they would be fixed for a subsequently acquired REMIC IO at the time of the acquisition. Essentially a holder of a REMIC IO would apply the same methodology regardless of whether its acquisition was on the issue date (with the holder calculating OID based on estimates that were fixed on that date)

[5] Section 165(g) allows a deduction for losses on worthless ''securities,'' as defined in section 165(g)(2)(C). REMIC regular interests, however, fall outside this definition, because they are not issued by a government, a political subdivision, or a corporation. (Under section 860A(a), a REMIC is not treated as a corporation.)

or on a subsequent date (with the holder calculating market discount based on estimates that were fixed on the subsequent acquisition date).

If the amount of market discount is based on the revised issue price, as provided in section 1276(a)(2) and (4), the rules will need to integrate accrual of market discount (which will be specific to each holder) and accrual of OID (which will be the same for all holders). If the amount of market discount is based on remaining SRPM at the time of acquisition, accrual of the market discount will be a substitute for any OID accrual. In either case, a holder with any market discount will need substantial amounts of individualized data from the REMIC servicer. Comments are requested as to the REMIC servicer's ability to provide the necessary individualized data.

It would be possible to revise the rules for accrual of market discount without adopting a rule recognizing Negative OID. As described above, however, if this recognition is permitted generally and is made available to secondary-market purchasers as well as initial purchasers, additional questions will be presented for secondary-market purchasers. These would include whether the amount of market discount should be redetermined and, if so, what the effect of that determination would be on collateral consequences of market discount such as the deferral of interest deductions under section 1277. One possibility would be to condition the recognition of Negative OID for secondary-market purchasers on an election by the holder to be taxable under the OID rules on both OID and market discount or premium. (See the election under § 1.1272–3.)

Negative Yield Instruments

The IRS and Treasury are aware that there are some REMIC IOs for which the prepayment speed that the servicer projected at the pricing date produces a projected negative yield. Arms-length investors do not voluntarily enter transactions with anticipated negative yields. Rather, such an investor may subjectively anticipate a different prepayment speed, or the investor may be ''making a bet'' on the occurrence of a prepayment scenario with a rate of return that more than compensates for its low probability of occurring. Mathematically, ''discounting'' a cash flow at a negative yield produces a present value that is greater than the sum of the future values of the cash flow. Unmodified application of the PAC method would therefore be unreasonable because it would require the holder to include amounts in income that are based on unrealistically high deemed present values of future cash flows. Comments are requested on whether the PAC method should be altered by requiring the use of a discount rate that is no less than an economically reasonable discount rate or whether some other adjustment would be more appropriate.

Request For Comments

The IRS and Treasury request comments on the desirability of adopting special rules for taxing REMIC IOs, high-yield REMIC regular interests, and apparent negative-yield instruments, and whether those special rules should also be applied to other similar instruments (including how to identify such similar instruments). Comments and suggestions are also requested regarding possible approaches to what additional special rules may be desirable, including the possible recognition of Negative OID, the formulation of special guidelines for the application of section 166 to REMIC IOs and similar instruments, and the adoption of a new alternative method applicable to REMIC IOs and similar instruments.

Persons providing comments may want to consider, among other things, the following questions. Should recognition of Negative OID be limited to prior inclusions of OID, to prior inclusions of OID and market discount, or to some other amount? If any limit is imposed, should the limit apply to all holders or only to those who do not acquire their interests at original issue? If recognition of Negative OID by initial purchasers is limited to prior OID inclusions, should recognition of Negative OID be permitted for secondary-market purchasers to the extent of prior market discount inclusions as well as OID inclusions? If recognition of Negative OID is unlimited for initial purchasers, should it be limited for secondary-market purchasers? Should recognition of Negative OID for secondary-market purchasers result in a redetermination of a purchaser's market discount and, if so, should the redetermination affect the application of the interest deferral provisions in section 1277? Alternatively, is the situation addressed adequately by currently recognizing both Negative OID and currently accruing market discount? Should recognition of Negative OID by secondary-market purchasers be conditioned on an election to treat all discount and premium on the instrument as OID?

Nancy Jardini,

Deputy Commissioner for Services and Enforcement.

Appendix

Examples

Issue Price $8.97
Expected Yield 8.455%
Expected Cash Flows:

Year 0	(8.97)
Year 1	5.00
Year 2	2.50
Year 3	1.50
Year 4	1.00
Year 5	0.50

If pays as expected:

End AIP	Payments	Beg. AIP	OID
4.73	5.00	8.97	.76
2.63	2.50	4.73	.40
1.35	1.50	2.63	.22
0.46	1.00	1.35	.11
0	0.50	0.46	.04
			1.53

Actual Yield 8.455%.

If pays faster than expected:

End AIP	Payments	Beg. AIP	OID
1.89	5.00	8.97	(1.11)
1.05	1.00	2.86	(0.35)
0.54	0.60	1.50	(0.19)
0.18	0.40	0.72	(0.09)
0	0.20	0.23	(0.03)
			(1.77)

Actual Yield −12.397%.

Holder's OID Income under Current Rules (w/ Negative OID prohibition):

Year 1	0
Year 2	0
Year 3	0
Year 4	0
Year 5	0

1.77 loss at maturity.

Holder's OID income under Proposal allowing Negative OID:

Year 1	[1](2.08)
Year 2	0.16
Year 3	0.09
Year 4	0.05
Year 5	0.02

[1] Loss.
Overall income (1.77).

Alternative Method Example

Examples

Investment/Issue Price $8.97
Expected Yield 8.455%
Total expected return: $10.50

Example 1

Expected Cash Flows:

Year 0	(8.97)
Year 1	5.00
Year 2	2.50
Year 3	1.50
Year 4	1.00
Year 5	0.50

(Offset amounts in bold.)

Year 1

payments for year/total expected payments = 5/10.5 = .47
ratio multiplied by investment = .47(8.97) = **4.27**

Year 2

2.5/10.5 = .23
.23(8.97) = **2.14**

Year 3

1.5/10.5 = .143
.143(8.97) = **1.28**

Year 4

1/10.5 = .095
.095(8.97) = **.85**

Year 5

.5/10.5 = .047
.047(8.97) = **.43**

[4.27 + 2.14 + 1.28 + .85 + .43 = 8.97]

Example 2

If the expected return is not updated, the holder won't recover its investment.

Actual Cash Flows:

Year 0	(8.97)
Year 1	5.00
Year 2	1.00
Year 3	0.60
Year 4	0.40
Year 5	0.20

Year 1

5/10.5 = .48
.48(8.97) = **4.27**

Year 2

1/10.5 = .095
.095(8.97) = **.85**

Year 3

.6/10.5 = .06
.06(8.97) = **.51**

Year 4

.4/10.5 = .04
.04(8.97) = **.34**

Year 5

.2/10.5 = .02
.02(8.97) = **.17**

[4.27 + .85 + .51 + .34 + .17 = 6.14]

Example 3

If you update the expected return after year 1:

Actual Cash Flows:

Year 0	(8.97)
Year 1	5.00
Year 2	1.00
Year 3	0.60
Year 4	0.40
Year 5	0.20

Year 1

5/10.5 = .48
.48(8.97) = **4.27**

After year 1, total expected return is 7.20 (5 + 1 + .6+ .4 + .2):

Year 2

1/7.2 = .14
.14(8.97) = **1.25**

Year 3

.6/7.2 = .08
.08(8.97) = **.75**

Year 4

.4/7.2 = .06
.06(8.97) = **.50**

Year 5

.2/7.2 = .03
.03(8.97) = **.25**

[4.27 + 1.25 + .75 + .50 + .25 = 7.02]

If the holder recalculates Year 1, using the new total expected return ((5/7.2)(8.97)) = 6.23), and takes into account the difference between that amount (6.23) and the amount calculated using the original expected return (4.27), which equals 1.96, the holder will recover its total investment.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–108637–03]

RIN 1545–BB94

Accrual for Certain REMIC Regular Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the accrual of original issue discount (OID) on certain real estate mortgage investment conduit (REMIC) regular interests. The proposed regulations are necessary to provide guidance to REMICs, REMIC regular interest holders and information reporters regarding the accrual of OID. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by November 23, 2004. Outlines of topics to be discussed at the public hearing scheduled for November 17, 2004, must be received by October 27, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–108637–03), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–108637–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS—REG–108637–03). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, contact Rebecca Asta at (202) 622–3930. To be placed on the building access list for the hearing, contact Sonya Cruse at (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

1. General Background

A debt instrument may provide for qualified stated interest (QSI) (that is, certain periodic payments of stated interest), OID, or both. Sections 163(e) and 1271 through 1275 provide rules for the treatment of OID on debt instruments. In general, the holder of a debt instrument includes OID in income as it accrues, even if the holder generally uses a cash method of accounting. A holder of a REMIC regular interest includes QSI in income under an accrual method of accounting because section 860B(b) requires that amounts includible in gross income with respect to a REMIC regular interest be determined under an accrual method.

For many debt instruments, only one or two days separate the date on which the holder becomes entitled to a payment (the record date) from the date on which the holder receives payment (the payment date). For REMIC regular interests, however, the record date may precede the payment date by 15 to 30 days.

2. Current REMIC Accrual Practice

Under the governing contract provisions, REMIC regular interests generally accrue interest from the issue date to the final record date, and holders become entitled to receive interest payments based on month-end record dates. The IRS and the Treasury Department understand, however, that,

in general, REMIC servicers have interpreted the OID rules to require or permit holders' OID to accrue for tax purposes over the period from payment date to payment date and have treated QSI as accruing over the same periods. To compensate for accruing QSI and OID beyond the final record date to the final payment date, the servicers have treated QSI and OID on REMIC regular interests as not accruing from the date of issue for a period equal to the number of days between the record date and payment date. In effect, for tax purposes, the tax accrual of QSI and OID lags the legal accrual of interest by the delayed payment period.

For tax purposes, as of the date a REMIC regular interest is purchased in the secondary market, the purchaser begins to accrue QSI and OID, and the seller ceases to accrue QSI and OID. A purchaser that holds the instrument until the final payment date or redemption accrues QSI and OID past the final record date as long as it holds the instrument. A purchaser that begins to accrue QSI and OID on the purchase date gives up the benefit of the lag in the beginning of the accrual period. As a result, the delayed accrual system causes the last secondary market purchaser of a REMIC regular interest to accrue for tax purposes an additional number of days of QSI and OID equal to the number of days between the record and payment dates, and too much QSI and OID is allocated to the last secondary purchaser of the REMIC regular interest. Moreover, because of principal payments, the holder will earn interest on a declining principal balance, while the lagging tax accruals will be based on a higher principal amount between record dates and payment dates in many instances. Consequently, a secondary market purchaser that is not the last secondary market purchaser will experience tax accruals in excess of legal entitlements if the regular interest has significant stated principal and bears interest at a stated rate.

3. Overview of the Proposed Regulations

The proposed rules address the misallocation of QSI and OID by creating a special rule for accruing OID on REMIC regular interests that provide for a delay between record and payment dates. Under the proposed regulations, the period over which OID accrues generally coincides with the period over which the holder's right to interest payments accrues under the governing contract provisions.

Generally, under the proposed regulations, if the terms of a REMIC regular interest provide for a delay between the record and payment dates, the initial accrual period begins on the date of issuance of the regular interest, and the final accrual period ends on the final record date of that REMIC regular interest. By shifting the entire tax accrual schedule, this special rule allocates all QSI and OID to the period between the issue date and the final record date of the instrument and none to the period between the final record date and final payment date. For purposes of calculating OID in the final accrual period with the methodology described in section 1272(a)(6), but for no other purpose, payments on the REMIC regular interest after the end of that accrual period that are included in the stated redemption price at maturity of the instrument (such as the payment on the final payment date) are treated as being made during the final accrual period.

The IRS and Treasury Department recognize that, although the proposed regulations result in a more accurate allocation of QSI and OID among REMIC regular interest holders, some economic accuracy may be sacrificed by ending the accrual of OID before final payments are made on the regular interests. Therefore, the proposed regulations are limited to REMIC regular interests with delayed payment periods of fewer than 32 days. The regulation regarding REMIC regular interests with delayed payment periods of more than 31 days is reserved. The IRS and Treasury Department request comments on whether additional guidance is needed for these REMIC regular interests.

4. Accrual of Qualified Stated Interest

Section 1.1272–1(a) requires a holder to include QSI in income under the holder's regular method of accounting. Section 1.446–2(b) requires a holder, as well as the issuer, to accrue QSI ratably over the accrual period to which it is attributable. In addition, section 860B(b) requires a holder of a regular interest to accrue amounts into gross income regardless of the holder's overall method of accounting. The amounts that must be so accrued include QSI. The Treasury Department and the IRS understand that many REMIC servicers have accrued QSI over the same period as OID. It is intended that, with respect to the accrual periods referenced in § 1.446–2(b), the initial accrual period for QSI will begin on the date of issuance and the final accrual period for QSI will end on the final record date. As a result, the QSI accrues over the same period as the OID.

Proposed Effective Date

These regulations are proposed to apply to any REMIC regular interest issued after the date the final regulations are published in the **Federal Register**. The proposed regulations provide automatic consent for the holder of a REMIC regular interest to change its method of accounting for OID under the final regulations. The change is proposed to be made on a cut-off basis and, thus, does not affect REMIC regular interests issued before the date the final regulations are published in the **Federal Register**.

The Treasury Department and the IRS are concerned regarding the extent to which holders of REMIC regular interests will be aware that changes in accounting methods for QSI may be necessary to comply with the special rule in the proposed regulations. If a holder of REMIC regular interests relies on data provided on behalf of the REMIC rather than performing its own computations, the holder may be unaware that these rules will have required newly issued REMICs to alter the accrual periods over which interest reported to holders is computed. The Treasury Department and the IRS request comments on the way in which a change in accounting method for QSI should be effected.

The Treasury Department and the IRS request comments concerning the extent to which any other debt instruments provide for a significant delay between record and payment dates and, if some do, whether rules like those in the proposed regulations should be extended to them. Any comments received will be considered in connection with the publication of final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory flexibility assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and IRS specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 17, 2004, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by November 23, 2004 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 27, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Rebecca Asta of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1271–0 is amended by adding entries for § 1.1275–2(l) and (m) to read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(l) [Reserved].

(m) Special rule for certain REMIC regular interests.

(1) Scope.

(2) General rules.

(3) Special rule for calculation of OID in final accrual period.

(4) Definition of record date.

(5) Accrual of qualified stated interest.

(6) Example.

(7) Treatment of REMIC regular interests if the record dates and the payment dates are separated by more than thirty-one days.

(8) Effective date.

* * * * *

Par. 3. Section 1.1275–2 is amended by adding new paragraphs (l) and (m) to read as follows:

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(l) [Reserved].

(m) *Special rules for certain REMIC regular interests*—(1) *Scope.* If the terms of a REMIC regular interest (as defined in section 860G(a)(1)) provide for a delay between its record dates and the associated payment dates, the initial accrual period and final accrual period for that regular interest are determined under this paragraph (m). Except as provided in paragraph (m)(7) of this section, this paragraph (m) does not apply to a REMIC regular interest if the record dates and the payment dates are separated by more than thirty-one days.

(2) *General rules*—(i) *Initial accrual period.* The initial accrual period for a REMIC regular interest subject to this paragraph (m) begins on issuance of the REMIC regular interest.

(ii) *Final accrual period.* The final accrual period for a REMIC regular interest subject to this paragraph (m) ends on the final record date of the REMIC regular interest.

(3) *Special rule for calculation of OID in final accrual period.* In applying section 1272(a)(6)(A) to calculate OID in the final accrual period for a REMIC regular interest subject to this paragraph (m), payments after the end of the final accrual period of amounts included in the stated redemption price at maturity are treated as payments during the final accrual period.

(4) *Definition of record date.* For purposes of this paragraph (m), a *record date* of a REMIC regular interest is a date, provided by the terms of the REMIC regular interest, on which the holder becomes entitled to a payment (of interest or principal) that is to be made on a subsequent payment date.

(5) *Accrual of qualified stated interest.* See § 1.446–2 for the accrual of qualified stated interest.

(6) *Example.* The following example illustrates the application of this paragraph (m).

Example. REMIC X issues regular interests on January 1, 2009. The terms of the regular interests provide for payments of interest and principal to the persons who hold the regular interests on the last day of the calendar month (the record date). Each such payment is to be made on the fifteenth day of the succeeding calendar month (the payment date). The last payment with respect to the regular interests issued by REMIC X is to be made on January 15, 2014, to persons who hold the regular interests on December 31, 2013. Under this paragraph (m), the initial accrual period begins on the date of issuance, January 1, 2009, and the last accrual period ends on the last record date, December 31, 2013.

(7) *Treatment of REMIC regular interests if the record dates and the payment dates are separated by more than thirty-one days.* [Reserved]

(8) *Effective date*—(i) *In general.* This paragraph (m) applies to REMIC regular interests issued after the date the final regulations are published in the **Federal Register**.

(ii) *Automatic consent to change method of accounting.* Taxpayers are hereby granted the Commissioner's consent under section 446(e) to change their method of accounting for REMIC regular interests to which this paragraph (m) applies if—

(A) The change involves changing accrual periods to accrual periods allowed by this paragraph (m);

(B) The change is made for the first taxable year of the taxpayer during which the taxpayer holds a REMIC regular interest to which the rules of this paragraph (m) apply; and

(C) The change in method of accounting is effected on a cut-off basis.

Deborah M. Nolan,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–19479 Filed 8–24–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA159–5083b; FRL–7805–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision of Flow Control Date in Nitrogen Oxides Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to convert a conditional approval in the Virginia State Implementation Plan (SIP) to a full approval. As required by the conditional approval, Virginia has submitted a SIP revision pertaining to the change in flow control date in the allowance banking provisions of its NO_x Budget Trading Program. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the conversion action is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 24, 2004.

ADDRESSES: Submit your comments, identified by VA159–5083 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov*.

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA 159–5083. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 18, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

[FR Doc. 04–19433 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2301, MB Docket No. 04–282, RM–11042]

Digital Television Broadcast Service; El Dorado, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Arkansas Educational Television Commission, permittee of station KETZ, DTV channel *30, El Dorado, Arkansas, proposing the substitution of DTV channel *12 for DTV channel *30. DTV Channel *12 can be allotted to El Dorado, Arkansas, at reference coordinates 33–04–41 N. and 92–13–41 W. with a power of 6, a height above average terrain HAAT of 541 meters.

DATES: Comments must be filed on or before November 8, 2004, and reply comments on or before November 23, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

as follows: Margaret L. Miller, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC (Counsel for Arkansas Educational Television Commission).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–282, adopted July 23, 2004, and released August 16, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 301–816–2820, facsimile 301–816–0169, or via e-mail *joshir@erols.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4).

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Arkansas is amended by removing DTV channel *30 and adding DTV channel *12 at El Dorado.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–19465 Filed 8–24–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 69, No. 164
Wednesday, August 25, 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

Office of the Secretary

[Doc. # CN–04–002]

Proposal To Reestablish the Advisory Committee on Universal Cotton Standards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to reestablish the Advisory Committee on Universal Cotton Standards.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to reestablish the Advisory Committee on Universal Cotton Standards (Committee). The committee reviews official Universal Standards for American Upland cotton prepared by USDA and would make recommendations regarding the establishment or revision of the standards.

DATES: Comments must be received on or before September 24, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to Norma McDill, Deputy Administrator, Cotton Program, Agricultural Marketing Services, USDA, 1400 Independence Avenue, SW., Stop 0224, Room 2641–South, Washington, DC 20250–0224. Comments should be submitted in duplicate. Comments may also be submitted electronically to: *www.cottoncomments@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the Cotton Program, AMS, USDA, Room 2641–South, 1400 Independence Avenue, SW., Washington, DC. A copy of this action may be found at *http://www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone 202–720–2145, facsimile 202–690–1718, or e-mail at *norma.mcdill@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture is considering the reestablishment of the Advisory Committee, which would be composed of foreign and domestic representatives of the cotton industry. The purpose of the committee would be to review official Universal Standards for U.S. Upland cotton prepared by USDA and make recommendations regarding the establishment or revision of the standards established under the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The last Advisory Committee on Universal Standards was established June 19, 2000. The Advisory Committee's term ended in 2002.

Equal opportunity practices, in line with USDA policies, would be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of diverse groups served by the Department, membership would include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Balanced committee membership would be attained domestically and internationally through the following Committee composition.

Representation by Domestic Industry

The U.S. cotton industry's committee membership would be comprised of 12 producers and ginners, 6 representative of merchandising firms, and 6 representatives of textile manufacturers. These representatives would be appointed by the Secretary of Agriculture.

Each member would have one vote. Accordingly, voting privileges will be divided as follows: (1) U.S. cotton producers and ginners—12 votes; (2) U.S. merchandising firms—6 votes; (3) U.S. textile manufacturers—6 votes.

Representation by Foreign Signatory Associations

There would be 2 committee members designated from each of the foreign signatory associations. These committee members would be designated by the respective associations. Voting privileges would be divided as follows: (1) Foreign signatory merchant associations—6 votes; (2) Foreign signatory spinner associations—6 votes.

Domestic members selected for the committee shall serve without pay, but with reimbursement of travel expenses and per diem for attendance at the committee meeting.

A thirty-day comment period is provided for interested persons to comment on this action.

Dated: August 18, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–19400 Filed 8–24–04; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Regional Office Administered Program Forms for the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public to comment on the proposed Food and Nutrition Service (FNS) forms which are used in the administration of the Child and Adult Care Food Program (CACFP) for sponsoring organizations whose participation in this program is administered directly by the FNS Mid-Atlantic Regional Office (FNS–MARO). This type of program is known as a Regional Office Administered Program (ROAP). FNS–MARO directly administers participation in the CACFP in Virginia.

DATES: Written comments must be submitted on or before October 25, 2004.

ADDRESSES: Send comments and requests for copies of this information collection to Terry A. Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park

Center Drive, Room 640, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Terry Hallberg, (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 226, Child and Adult Care Food Program Regulations.

OMB Number: To be assigned.

Expiration Date of Approval: To be assigned.

Type of Request: New collection.

Abstract: This request is being made because the forms in this collection are being removed from OMB Collection 0584–0055, which implements data collection for the CACFP. These forms will be used only for the administration of the CACFP in the CACFP ROAP directly administered in Virginia by the FNS–MARO. OMB Collection 0584–0055 will continue to maintain the burden for the activities associated with the collection of information in the administration of the CACFP in all State agencies other than the CACFP ROAP in Virginia. However, there will not be forms associated with these burdens, since each State agency develops its own forms to implement the administrative requirements. This request also makes changes to two of the forms which are being removed from OMB Collection to conform these forms to the requirements of the management information and payment system of the Child Nutrition Payment Center.

The following describes the uses and justification for each form being transferred to this collection, along with the changes requested for two of the forms.

1. *Form FNS 341, Application for Participation for Day Care Homes, Child Care, and Adult Care Centers.* For family day care homes and child/adult care centers participating under a sponsoring organization, the sponsoring organization must certify the applications of all facilities under its jurisdiction. The information on this form enables FNS–MARO to determine that a family day care home or child/adult care center meets the qualifications for receiving benefits under the program.

2. *Form FNS 342, Application for Participation and Management Plan for Sponsoring Organizations in the CACFP.* Each sponsoring organization and independent center applying for participation in the CACFP must provide information to show that it is capable of exercising complete administrative and financial responsibility for the operation of its food service under the program and complying with all applicable statutes and regulations. Form FNS 342 is being divided into FNS 342–A for child/adult care independent centers and sponsors of child/adult care centers, and FNS 342–B, for sponsors of family day care homes. In the Child Nutrition Payment Center management information system, application information is collected and recorded separately for child/adult care independent centers and sponsoring organizations and for family day care home sponsoring organizations. The data elements for each type of entity are the same as the current form FNS 342, but each of the new forms only has the specific data elements which are relevant to the type of entity to which the form applies. Internet versions of Forms FNS 342–A and FNS 342–B will be available via a secure Internet application for independent centers and sponsoring organizations who wish to submit changes to the application information and the annual application renewal electronically. Sponsors who do not wish to submit electronically will submit paper copies of the forms to the FNS–MARO, where the data will be entered into the Child Nutrition Payment Center management information system.

3. *Form FNS 82, Child and Adult Food Care Program Claim for Reimbursement.* Each sponsoring organization which has entered into an agreement with the FNS-MARO to operate the CACFP must provide information each month on the number and types of facilities operated, the number, type, and eligibility category of meals served, and, for family day care home sponsors, the costs of administering the Program. This information is used by the Child Nutrition Payment Center to compute the reimbursement due to each institution. Form FNS 82 is being divided into FNS 82–A, Claim for Reimbursement-Child/Adult Care Centers, and FNS 82–B, Claim for Reimbursement, Family Day Care Home Sponsoring Organizations. In the Child Nutrition Payment Center system, claims for reimbursement are collected and recorded separately for child/adult care independent centers and sponsoring organizations and for family day care home sponsoring organizations. The data elements for each type of entity are the same as the current form FNS 82, but each of the new forms only has the specific data elements which are relevant to the type of entity to which the form applies. Internet versions of Forms FNS 82–A and FNS 82–B will be available via a secure Internet application for independent centers and sponsoring organizations who wish to monthly claims electronically; sponsors who do not wish to submit electronically will submit paper copies of the forms to the FNS-MARO, where the claim for reimbursement will be entered into the Child Nutrition Payment Center system. All sponsors receive reimbursement payments via electronic funds transfer, whether the claim is submitted electronically or on paper.

4. *Form FNS 344, Agreement (CACFP).* This form is the contractual agreement that FNS executes with a sponsoring organization for participation in the Program. The agreement stipulates the institution's obligations in assuming administrative and financial obligations for Program operations.

5. *Form FNS 430, Application for Start-Up Payments for Family Day Care Home Sponsoring Organizations.* Sponsoring organizations of family day care homes may be eligible to receive administrative funds for initiating or expanding food service operations in family day care homes. The information a sponsor provides on this form enables FNS–MARO to determine the approval or denial of a request for start-up administrative payments.

6. *Form FNS 431, Agreement Between Sponsoring Organization and USDA for Start-Up Payments.* This form authorizes the use of administrative funds to initiate or expand a food service program at family day care homes. An eligible sponsoring organization may enter into an agreement with USDA to use these funds for start up or expansion activities.

7. *Form FNS 433, Agreement Between Sponsoring Organizations and Family Day Care Homes.* The respective rights and responsibilities of sponsoring organizations and family day care home providers are specified on this form. Each sponsoring organization of family day care homes is required to execute an agreement with each provider participating in the program under its sponsorship.

BILLING CODE 3410–30–P

Estimated Annual Reporting Burden

	Section	Annual Number of Respondents	Annual Frequency	Average Burden per Response	Annual Burden Hours
FNS 341 - Application for Participation for Day Care Home, Child Care, and Adult Care Centers **Each state agency must establish an application procedure under this part to determine the eligibility of applicant institutions and facilities for which applications are submitted by sponsoring organizations.**					
Total Existing Facility		0	0	0	0
Total Proposed Facility	Homes 7 CFR 226.6(b) Child/Adult Care Centers 7 CFR 226.6(b)	2,917 886	1 1	.23 3.7	670.91 3278.2
Total Reporting Burden					
Total Existing	0				
Total Proposed	3949.11				
Change	3949.11				
FNS 342-A- Child/Adult Care Sponsor/Independent Center Application for Participation **Each state agency must establish an application procedure under this part to determine the eligibility of applicant institutions and facilities for which applications are submitted by sponsoring organizations.**					
Total Existing Institution		0	0	0	0
Total Proposed Institution	7 CFR 226.6(b)	340	1	1.84	625.6
Total Reporting Burden:					
Total Existing	0				
Total Proposed	625.6				
Change	+ 625.6				
FNS 342-B – Family Day Care Home Sponsor Application for Participation **Each state agency must establish an application procedure under this part to determine the eligibility of applicant institutions and facilities for which applications are submitted by sponsoring organizations.**					
Total Existing Institution					0
Total Proposed Institution	7 CFR 226.6(b)	19	1	1.84	34.96
Total Reporting Burden:					
Total Existing	0				
Total Proposed	34.96				
Change	+34.96				
FNS 82-A – Child/Adult Care Center Claim for Reimbursement **Each child care institution shall report each month to the State agency the total number of meals, by type, (breakfasts, lunches, suppers, supplements) served to children**					
Total Existing Institution					
Total Proposed Institution	7 CFR 226.11(b)	340	12	2.29	9,343.2
Total Reporting Burden					
Total Existing	0				
Total Proposed	9,343.2				
Change	+ 9,343.2				

Estimated Annual Reporting Burden (continued)

	Section	Annual Number of Respondents	Annual Frequency	Average Burden per Response	Annual Burden Hours
FNS 82-B – Family Day Care Home Sponsor Claim for Reimbursement **Each child care institution shall report each month to the State agency the total number of meals, by type, (breakfasts, lunches, suppers, supplements) served to children**					
Total Existing Institution		0	0	0	0
Total Proposed Institution	7 CFR 226.11(b)	19	12	2.29	522.12
Total Reporting Burden					
Total Existing	0				
Total Proposed	522.12				
Change	+522.12				
FNS 344 - Agreement – CACFP **The State agency must renew agreements with institutions not less than annually**					
Total Existing Institution		0	0	0	0
Total Proposed Institution	7 CFR 226.6(b)(1)	359	1	.92	330.28
Total Reporting Burden					
Total Existing	0				
Total Proposed	330.28				
Change	+330.28				
FNS 430 - Application for Start-up Payments for Family Day Care Home Sponsoring Organizations, CACFP **Each State agency shall establish procedures for evaluating requests for start up and expansion payments**					
Total Existing Institution					
Total Proposed Institution	7 CFR 226.7(h)	2	1	.92	1.84
Total Reporting Burden					
Total Existing	0				
Total Proposed	1.84				
Change	+ 1.84				
FNS 431 - Agreement Between Sponsoring Organization & USDA for Start up payment (Child and Adult Care Food Program **Sponsoring organizations which apply for and meet the criteria for start-up or expansion payments shall enter into an agreement with the State agency.**					
Total Existing Institution					
Total Proposed Institution	7 CFR 226.12(b)(4)	2	1	.92	1.84
Total Reporting Burden					
Total Existing	0				
Total Proposed	1.84				
Change	+1.84				

Estimated Annual Reporting Burden (continued)

	Section	Annual Number of Respondents	Annual Frequency	Average Burden per Response	Annual Burden Hours
FNS 433 - Agreement Between Sponsoring Organization & Family Day Care Homes (CACFP) Each State agency shall develop and provide for the use of a standard form of agreement between each day care home sponsoring organization and all day care homes participating in the Program under such organization					
Total Existing Facility					
Total Proposed Facility	7 CFR 226.6(p)	2917	1	.08	233.36
Total Reporting Burden					
Total Existing	0				
Total Proposed	233.36				
Change	+ 233.36				

Estimated Annual Recordkeeping Burden

	Section	Annual Number of Respondents	Annual Frequency	Average Burden per Response	Annual Burden Hours
Each independent center and sponsoring organization of centers must ensure that family size and income, menus, meal counts, enrollment, invoices and receipts, claims for reimbursement, day care licenses, CACFP application, and tax exempt certification (if applicable) are maintained on file for a period of 3 years. Sponsoring organizations of day care homes must ensure that menus, meal counts, attendance, enrollment, day care license, CACFP application, and providers family size and income records are maintained for up to 3 years.					
Total Existing Institution		0	0	0	0
Total Proposed Institution	7 CFR 226.10(d),226.15(e)	359	1	6	2,154
Total Recordkeeping Burden:					
Total Existing	0				
Total Proposed	2,154				
Change	+ 2,154				
Sponsoring organizations maintain documentation used to classify homes as Tier 1 sponsors					
Total Existing Institution					0
Total Proposed Institution	7 CFR 226.15(e)(3)	19	113	.083	178.201
Total Recordkeeping Burden:					
Total Existing	0				
Total Proposed	178.201				
Change	+178.201				
Sponsoring organizations, upon request, collect free and reduced price applications from enrolled children in Tier 2 that are not providers own at least once a year and maintain eligibility determination of each child					
Total Existing Institution					
Total Proposed Institution	7 CFR 226.15(e)(3)	19	63	.083	99.351
Total Recordkeeping Burden					
Total Existing	0				
Total Proposed	99.351				
Change	+99.351				

Estimated Annual Recordkeeping Burden (continued)

	Section	Annual Number of Respondents	Annual Frequency	Average Burden per Response	Annual Burden Hours
Sponsoring organizations collect information to conduct verification of homes that qualify as Tier 1 based on provider's income					
Total Existing Institution		0	0	0	0
Total Proposed Institution	7 CFR 226.23(h)(6)	19	31	.083	48.887
Total Recordkeeping Burden					
Total Existing	0				
Total Proposed	48.887				
Change	+48.887				

Dated: August 10, 2004.

Roberto Salazar,

Administrator.

[FR Doc. 04–19428 Filed 8–24–04; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee; Notice of Meetings.

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on September 7 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on September 7 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The RAC will discuss the process for soliciting and reviewing project proposals in FY 2005 The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: August 19, 2004.

William D. Metz,

Deputy Forest Supervisor.

[FR Doc. 04–19423 Filed 8–24–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–846)

Brake Rotors From the People's Republic of China: Final Results of the Tenth New Shipper Review

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

ACTION: Notice of final results of the tenth new shipper review.

SUMMARY: On June 1, 2004, the Department of Commerce published the preliminary results of the tenth new shipper review of the antidumping duty order on brake rotors from the People's Republic of China (PRC). *See Brake Rotors from the People's Republic of China: Preliminary Results of the Tenth New Shipper Review*, 69 FR 30875 (June 1, 2004) (*Preliminary Results*). This review examined one exporter Shenyang Yinghao Machinery Co., Ltd (Shenyang Yinghao). The period of review is April 1, 2003, through September 30, 2003 (POR). We gave interested parties the opportunity to comment on our preliminary results. However, no interested party filed such comments.

Since the preliminary results, we have made certain changes in the margin calculation for the respondent in this review (*see* section entitled ''Changes Since the Preliminary Results'' below for details). However, these changes did not impact the overall weighted–average margin calculated in the preliminary results. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: August 25, 2004.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1280, or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2004, the Department published in the **Federal Register** the *Preliminary Results* (*see* 69 FR 30875). On June 8, 2004, Shenyang Yinghao, the respondent, submitted a copy of its 2003 audited financial statement.[1] Neither the respondent nor the petitioner filed a case brief in this review.[2]

Scope of Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all–terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation

[1] Department officials at verification requested that the audited financial statement be placed on the record of this review at the time of its completion (*see* the April 14, 2004, verification report).

[2] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufactures.

without any further operations. Semi–finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Changes Since the Preliminary Results

For the final results, we made adjustments to our calculation of the surrogate ratios for factory overhead, selling, general and administrative expenses (SG&A), and profit for Kalyani Brakes Limited (Kalyani). Specifically, we offset Kalyani's cost of manufacturing (COM) by its sales of scrap, which impacted the surrogate factory overhead, SG&A and profit calculations (*see* August 18, 2004, Final Results Valuation Memorandum). Furthermore, we note that in the Preliminary Results Valuation Memorandum (PRVM), we misstated our reasons for removing certain line items from Kalyani's SG&A surrogate calculation. Specifically, in the PRVM we incorrectly stated that we did not make a deduction for scrap sales revenue and cash discounts in the SG&A calculation because the respondent in this review did not have sales of scrap nor did it have cash discounts. However, as noted in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Final Results of the Ninth New Shipper Review*, 69 FR 42039 (July 13, 2004) and its accompanying Issues and Decision Memorandum at Comment 1, it is not the Department's practice to tailor surrogate financial ratios to match the circumstances of the PRC producers; however, it is the Department's practice to offset sales of scrap from the COM and to treat cash discounts as a reduction to sales revenue rather than to treat these items as selling expenses.

Final Results of Review

We determine that the following weighted–average margin percentage exists for the following company during the period April 1, 2003, through September 30, 2003:

Manufacturer/producer/exporter	Margin Percent
Shenyang Yinghao Machinery Co., Ltd	0.00

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we calculated importer- or customer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer–specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments of brake rotors from the PRC that are manufactured and exported by Shenyang Yinghao Machinery Co., Ltd. (Shenyang Yinghao) and entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review.

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of subject merchandise from Shenyang Yinghao entered, or withdrawn from warehouse, for consumption on or after the publication date of this final results, as provided by section 751(a)(2)(B) and (C) of the Act: (1) the cash deposit rate for for subject merchandise manufactured and exported by Shenyang Yinghao will be zero; (2) the cash deposit rate for subject merchandise exported by Shenyang Yinghao but not manufactured by it will continue to be the PRC–wide rate (*i.e.*, 43.32 percent).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

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

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214.

Dated: August 18, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–1924 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Fresh Garlic From the People's Republic of China

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

SUMMARY: In response to a letter from Shandong Heze International Trade and Developing Company (Shandong Heze) notifying the Department of Commerce

(the Department) that its corporate name has changed to Heze Ever-Best International Trade Co., Ltd. (Heze Ever-Best), the Department is initiating a changed circumstances administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (*see* Antidumping Duty Order: Fresh Garlic From the People's Republic of China, 59 FR 59209 (November 16, 1994)).

Based on information submitted by Shandong Heze, we preliminarily determine that Heze Ever-Best is the successor-in-interest to Shandong Heze and, as such, is entitled to Shandong Heze's cash deposit rate with respect to entries of subject merchandise.

EFFECTIVE DATE: August 25, 2004.

FOR FURTHER INFORMATION CONTACT: Sochieta Moth or Charles Riggle at (202) 482–0168 or (202) 482–0650, respectively; NME Office, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 2004, Shandong Heze requested that the Department initiate a changed circumstances review to confirm that Heze Ever-Best is the successor-in-interest to Shandong Heze for purposes of determining antidumping duty liabilities. On July 28, 2004, the Department requested additional information from Heze Ever-Best concerning the circumstances of the name change. On August 4, 2004, Heze Ever-Best responded to our request for information.

Scope of the Review

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

In order to be excluded from antidumping duties, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use, or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed, must be accompanied by declarations to the U.S. Customs and Border Protection (CBP) to that effect.

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty finding which shows changed circumstances sufficient to warrant a review of the order. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Shandong Heze's submissions.

Section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results in a single notice, if the Department concludes that expedited action is warranted. In this instance, because we have the information necessary to make a preliminary finding already on the record and no other interested party has commented on, or objected to, Shandong Heze's request for a changed circumstances review, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in (1) management, (2) production facilities, (3) suppliers, and (4) customer base. *See, e.g.,* Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review, 59 FR 6944 (February 14, 1994). While no single factor, or combination of factors, will necessarily provide a dispositive indication of succession, the Department will generally consider one company to be a successor to another company if its resulting operation is essentially the same as that of its predecessor. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash deposit rate of its predecessor.

In its July 8, 2004, submission, Shandong Heze stated that the name change was effected solely for the purpose of enhancing its international and domestic sales, explaining that ''Ever-Best'' describes the quality of their products, and that the deletion of ''Shandong'' and ''Developing'' from its name specifies its operations as a trading company. Shandong Heze also stated that the name change was not due to any changes in ownership, corporate structure, management, supplier relationships, or customer base, all of which remain the same. Shandong Heze provided documentation in support of these claims including copies of the business licenses of the company before and after the name change, the resolution of the Board of Directors authorizing the name change, the application for the name change filed with the Heze Industry and Commerce Administration Bureau and the Bureau's approval of the application, and corporate organization charts before and after the name change. Shandong Heze also stated that since the name change, subject merchandise was produced at the same facilities that had been utilized by the company prior to the name change, and provided a copy of its lease as supporting documentation. Shandong Heze has provided evidence that there were no changes in the company's corporate structure and management as a result of, or contemporaneously with, the change of name.

With respect to supplier relationships, Shandong Heze stated that Heze Ever-Best works with the same subject merchandise supplier as Shandong Heze did prior to the name change. Finally, Shandong Heze asserts that there have been no changes in its customer relationships or customer base due to the name change and there have been no changes in product names or product brands. Shandong Heze submitted copies of e-mails and fascimiles that were sent to the company's suppliers and customers informing them of the name change to support their assertion that Heze Ever-Best has the same

supplier and customer base as Shandong Heze.

Based on information submitted by Shandong Heze, we preliminarily find that Heze Ever-Best is the successor-in-interest to Shandong Heze. We find that the company's organizational structure, senior management, production facilities, supplier relationships, and customers have remained essentially unchanged. Furthermore, Shandong Heze has provided sufficient documentation of its name change. Based on all the evidence reviewed, we find that Heze Ever-Best operates as the same business entity as Shandong Heze. Thus, we preliminarily find that Heze Ever-Best should receive the same antidumping duty cash-deposit rate with respect to the subject merchandise as Shandong Heze, its predecessor company.

Should our final results remain the same as these preliminary results, we will instruct CBP to assign Heze Ever-Best the antidumping duty cash deposit rate applicable to Shandong Heze.

Public Comment

Any interested party may request a hearing within 14 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 28 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 21 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review not later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216 and 351.221(c)(3) of the Department's regulations.

Dated: August 18, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–1920 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–351–804, A–427–009, A–428–803, A–580–805, A–588–812, A–570–802, and A–412–803

Industrial Nitrocellulose from Brazil, France, Germany, the Republic of Korea, Japan, the People's Republic of China, and the United Kingdom: Notice of Final Results of Changed Circumstances Review and Revocation of the Antidumping Duty Orders

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

SUMMARY: On June 17, 2004, the Department of Commerce published its preliminary results of changed circumstances review and intent to revoke the antidumping orders on industrial nitrocellulose from Brazil, France, Germany, the Republic of Korea (South Korea or Korea), Japan, the People's Republic of China (the PRC), and the United Kingdom (the UK). The basis of the revocation is that Green Tree Chemical Technologies (Green Tree), the sole producer of industrial nitrocellulose in the United States, has ceased production.

EFFECTIVE DATE: August 25, 2004.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Enforcement, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1983, the Department published an antidumping duty order on industrial nitrocellulose from France. *See Antidumping Duty Order: Industrial Nitrocellulose from France*, 48 FR 36303 (August 10, 1983). On July 10, 1990, the Department published antidumping orders on industrial nitrocellulose from Brazil, Germany, Korea, Japan, the PRC, and the United Kingdom. *See Antidumping Duty Order: Industrial Nitrocellulose from Brazil*, 55 FR 28266, *Antidumping Duty Order: Industrial Nitrocellulose from the Federal Republic of Germany*, 55 FR 28271, *Antidumping Duty Order: Industrial Nitrocellulose from the Republic of Korea*, 55 FR 28266, *Antidumping Duty Order: Industrial Nitrocellulose from Japan*, 55 FR 28268, *Antidumping Duty Order: Industrial Nitrocellulose from the People's Republic of China*, 55 FR 28267, and *Antidumping Duty Order: Industrial Nitrocellulose from the United Kingdom*, 55 FR 28270.

On December 31, 2003, Nitro Quimica Brasileira (Nitro Quimica) requested that the Department revoke the antidumping duty order on industrial nitrocellulose from Brazil through a changed circumstances review. According to Nitro Quimica, revocation is warranted because of ''lack of interest'' on behalf of the U.S. industry. Specifically, Nitro Quimica asserts that no domestic producer of industrial nitrocellulose currently exists. Nitro Quimica contends that Hercules Incorporated, the only petitioner in the original investigation and the only U.S. producer at the time in which this order was issued, sold its nitrocellulose business to Green Tree on June 16, 2001. Nitro Quimica further contends that Green Tree closed its U.S. production facility on or about November 26, 2003. *See* Nitro Quimica December 31, 2003 letter at Attachment 3.

On February 12, 2004, Wolff Cellulosics GmbH (Wolff) asserted that the Department should revoke the order on industrial nitrocellulose from Germany because there is no U.S. producer of industrial nitrocellulose. Wolff argued that the Department should make revocation of the order on industrial nitrocellulose from Germany effective July 1, 2003, which is earliest date for which there are entries that have not yet been the subject of a completed administrative review. Wolff contended that Green Tree, the sole producer of the domestic like product, has ceased production and no longer maintains the capacity to produce industrial nitrocellulose. See Wolff's February 12, 2004 letter at Exhibits A and B. On February 25, 2004, the Department initiated a changed circumstances review with respect to the order on industrial nitrocellulose from Brazil (69 FR 8626, February 25, 2004).

On March 9, 2004, the Valspar Corporation (Valspar) requested that the Department revoke the antidumping duty orders on industrial nitrocellulose from France, Germany, Korea, Japan, the PRC, and the UK. Valspar asserts that cessation of production of the domestic like product constitutes ''lack of interest'' by the domestic industry in the continuation of the antidumping duty

orders. *See* Valspar's March 9, 2004 letter, at pages 1–2.

On March 23, 2004, Bergerac NC and its affiliated U.S. importer SNPF North America, LLC (collectively BNC) requested that the Department revoke the order on industrial nitrocellulose from France. BNC asserts that the cessation of production of the domestic like product constitutes ''lack of interest'' by the domestic industry in the order on industrial nitrocellulose from France.

On April 5, 2004, the Department initiated changed circumstances reviews of the antidumping orders on industrial nitrocellulose from France, Germany, Korea, Japan, the PRC, and the UK (69 FR 17643, April 5, 2004). On April 23, 2004, Wolff filed additional comments supporting its request for revocation of the order on industrial nitrocellulose from Germany.

On May 3, 2004, counsel for petitioners informed the Department that (1) Green Tree had located no buyer for its nitrocellulose production facility, (2) Green Tree did not anticipate finding such a buyer within the foreseeable future, and (3) Green Tree did not anticipate that either Green Tree or a successor–in-interest to Green Tree would resume production of industrial nitrocellulose within a determinable time frame. Accordingly, Green Tree acknowledged that it is no longer in a position to oppose revocation of the antidumping orders on industrial nitrocellulose from Brazil, France, Germany, Korea, Japan, the PRC, and the UK. *See* May 3, 2004 Memorandum from Michael J. Heaney to the File.

On June 17, 2004, we published *Industrial Nitrocellulose from Brazil, France, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom: Notice of Preliminary Results of Changed Circumstances Review and Intent to Revoke Antidumping Duty Orders*, 69 FR 33884 (*Preliminary Results*). In the *Preliminary Results*, we announced our intent to revoke the antidumping orders on industrial nitrocellulose from Brazil, Germany, Korea, Japan, the PRC, and the UK effective July 1, 2003. We also announced in those *Preliminary Results* our intent to revoke the antidumping duty order on industrial nitrocellulose from France effective August 1, 2003. We received no comments from interested parties concerning these Preliminary Results.

On July 14, 2004, Wolff filed a letter reiterating its position that the order on industrial nitrocellulose from Germany should be revoked effective July 1, 2003.

Scope of the Review

The product covered by this review is industrial nitrocellulose, currently classifiable under HTS subheading 3912.20.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent. Industrial nitrocellulose is used as a film–former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Final Results of Changed Circumstances Antidumping Duty Administrative Reviews

Having received no comments in objection to the analysis presented in our *Preliminary Results*, we are revoking the antidumping duty orders on industrial nitrocellulose from Brazil, Germany, Korea, Japan, the PRC, and the UK effective July 1, 2003. Additionally, we are revoking the antidumping duty order on industrial nitrocellulose from France effective August 1, 2003.

Instructions to Customs

In accordance with section 351.222 of the Department's Regulations, the Department will instruct U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, all unliquidated entries of industrial nitrocellulose from Brazil, Germany, Korea, Japan, the PRC, and the UK effective July 1, 2003. Additionally, the Department will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, all unliquidated entries of industrial nitrocellulose from France effective August 1, 2003. The Department will further instruct CBP to refund with interest any estimated duties collected with respect to unliquidated entries of industrial nitrocellulose from Brazil, Germany, Korea, Japan, the PRC, and the UK, entered, or withdrawn from warehouse, for consumption on or after July 1, 2003, in accordance with section 778 of the Act. The Department will additionally instruct CBP to refund with interest any estimated duties collected with respect to unliquidated entries of industrial nitrocellulose from France entered, or withdrawn from warehouse, for consumption on or after August 1, 2003.

Notification

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice of final results of changed circumstances review and revocation of the antidumping duty order is in accordance with sections 751(b) and (d), and 777(I)(1) of the Act and 351.216(d) and 351.222(g) of the Department's regulations.

Dated: August 18, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–1926 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics

August 20, 2004.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2005 tariff rate quotas on certain worsted wool fabric.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers for an allocation of the 2005 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by September 24, 2004. The Department will cause to be published in the Federal Register its determination to allocate the 2005 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on September 24, 2004.

ADDRESSES: Applications must be submitted to the Industry Assessment Division, Office of Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, DC 20230 (telephone: (202) 482-4058). Application forms may be obtained from that office (via facsimile or mail) or from the following Internet address: *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp*.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas (TRQs), providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12). On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. These include the extension of the program through 2005; the reduction of the in-quota duty rate on HTS 9902.51.12 (average fiber diameter 18.5 microns or less) from 6 percent to zero, effective for goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002; and an increase in the 2004 and 2005 TRQ levels to 3,500,000 square meters for HTS 9902.51.12 and to 4,500,000 square meters for HTS 9902.51.11. These levels may be modified by the President. See 15 CFR 340.

The Act requires that the TRQs be allocated to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States. On January 22, 2001 the Department published regulations establishing procedures for allocating the TRQs. 66 FR 6459, 15 CFR 335. In order to be eligible for an allocation, an applicant must submit an application on the form provided at *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp* to the address listed above by 5 p.m. on September 24, 2004 in compliance with the requirements of 15 CFR 335. Any business confidential information that is marked ''business confidential'' will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: August 20, 2004.

James C. Leonard III,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E4–1927 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole by the U.S. Government, as represented by the Department of Commerce. The inventions are 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.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, fax 301–869–2751, or e-mail: *mary.clague@nist.gov*. Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

[NIST Docket Number: 02–011]

Title: Superconformal Metal Deposition Using Derivitized Substrates.

Abstract: The invention provides a two-step superconformal process for depositing seam-free and void-free metal microelectronic conductors. The process involves first adsorbing a catalyst on the surface of the specimen by immersion in a catalyst-containing solution, followed by electrolytic metal deposition in a catalyst-free second solution containing supressors.

[NIST Docket Number: 03–012]

Title: System And Method For Authenticating Users Using Image Selection.

Abstract: The invention is a general-purpose mechanism for authenticating users through the selection of a sequence of images from a displayed assembly of images. While specifically aimed at hand-held devices, the visual log-in technique is suitable for most computing platforms that require user authentication. The technique takes the image sequences selected by the user and formulates a password that is dependent on both the sequence and style of their selection. Moreover, the invention allows the same image sequence to be used repeatedly in a password change dialogue, yet generate a completely different password value each time. The invention also introduces a new way of ''salting'' passwords to make them less vulnerable to attack, which can be readily incorporated into the password derivation process.

Dated: August 18, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–19416 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, September 23, 2004, from 8:30 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local

partnerships. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to update the board on the latest program developments at MEP including a MEP Update and discussions on Next Generation MEP. Discussions scheduled to begin at 1 p.m. and to end at 3:30 p.m. on September 23, 2004, on MEP budget issues will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Tuesday, September 21, 2004 and she will provide you with instructions for admittance. Ms. Peter's email address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene September 23, 2004 at 8:30 a.m. and will adjourn at 3:30 p.m. on September 23, 2004.

ADDRESSES: The meeting will be held in the Employees' Lounge, Administration Building, at NIST, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carrie Hines, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–3360.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 18, 2003, that portions of the meeting which involve discussion of proposed funding of the MEP may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of the meeting which involve discussion of the staffing of positions in MEP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in that portion of the meeting is likely to reveal information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 18, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–19415 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 040708203–4203–01]

Request for Technical Input—Standards in Trade Workshops

AGENCY: National Institute of Standards and TechnologyDepartment of Commerce.

ACTION: Request for workshop recommendations.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to submit recommendations for workshops covering specific sectors and targeted countries or regions of the world where training in the U.S. system of standards development, conformity assessment, and metrology may facilitate trade. Prospective workshops may be scheduled for one or two week periods. This notice is not an invitation for proposals to fund grants, contracts or cooperative agreements of any kind. NIST will offer a limited number of workshops, based upon the availability of resources. NIST will consider recommendations based upon which workshops would be most useful to intended audiences. Additional information about the NIST Standards in Trade Workshops is available at *http://ts.nist.gov/ts/htdocs/210/gsig/sitdescr.htm.*

DATES: All recommendations must be submitted no later than September 10, 2004.

ADDRESSES: All recommendations must be submitted to Elisabeth Gomez via email (*elisabeth.gomez@nist.gov*) or by mail to 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Elisabeth Gomez (301) 975–3089, *elisabeth.gomez@nist.gov.* Additional information about the NIST Standards in Trade workshops, to include schedules and summary reports for workshops held to date and participant information, is available at *http://ts.nist.gov/ts/htdocs/210/gsig/sitdescr.htm.*

SUPPLEMENTARY INFORMATION: The Standards in Trade Workshops are a major activity of the Global Standards and Information Group (GSIG) in the NIST Standards Services Division (SSD). The workshops are designed to provide timely information to foreign standards officials on U.S. practices in standards and conformity assessment. Participants are introduced to U.S. technology and principles in metrology, standards development and application, and conformity assessment systems.

Each workshop is a one or two week program offering an overview of the roles of the U.S. Government, private sector, and regional and international organizations engaged in standards development and conformity assessment practices. Specific workshop objectives are to: (1) Familiarize participants with U.S. technology and practices in metrology, standardization, and conformity assessment; (2) describe and understand the roles of the U.S. Government and the private sector in developing and implementing standards; and (3) develop professional contacts as a basis for strengthening technical ties and enhancing trade.

Workshop recommendations (maximum 5 pages) must address at a minimum the following points, in the order noted and labeled accordingly:

1. Name and Description of the Recommending Organization. Provide the primary mailing address and a brief description of the organization, including the name, telephone number and email address of the primary point of contact.

2. Industry Sector for Workshop Focus. Provide a description of the suggested industrial sector and focus area for the workshop. Consider the goals and potential benefits.

3. Calendar Dates Suggested for Workshop. Provide three or more suggested start dates for the workshop. The first date should be no earlier than 6 months from the initial date of this announcement.

4. Relevant NIST Organizational Link. Workshop topics must be linked to NIST activities and/or research. The appropriate NIST organizational unit, laboratory or program must be identified and the relevance of the activity to NIST must be demonstrated. If known, identify the NIST staff who could serve as the NIST internal point of contact.

5. Proposed Foreign Participants. Provide a representative list of the organizations that might participate in the workshop, including a description of their function or business and their country of incorporation or origin.

6. U.S. Stakeholder Participants (*e.g.*, Associations, Agencies, Users, others). Provide a list of the U.S.-based organizations that are likely to participate in the workshop.

7. Principal Topics. Describe the suggested topics for the workshop.

8. Related Site Visits and Events. Workshops can include visits to relevant business sites or events. Provide suggested site visit locations, events or other areas of interest and

discuss the relevance of each to the overall purpose of the proposed workshop's goals.

9. Proposed Workshop Objectives. Describe the intended goals to be attained and why they are important.

10. Expected Outcomes/Measures of Success. Include in this section a description of:

a. The anticipated benefit of the workshop for trade and market access;

b. The anticipated economic impacts (in dollars);

c. The potential for future opportunities for trade as a result of the workshop;

d. The measures of success;

e. The desired results of the workshop and how the results will be measured.

All recommendations must be submitted to Elisabeth Gomez via e-mail (*elisabeth.gomez@nist.gov*) or mail 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899 no later than September 10, 2004.

Dated: August 18, 2004.

Hratch G. Semerjian,

Deputy Director.

[FR Doc. 04–19414 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081204B]

Atlantic Highly Migratory Species; Advisory Panels

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

ACTION: Notice of Highly Migratory Species and Billfish Advisory Panel meetings; request for nominations.

SUMMARY: NMFS will hold a joint Highly Migratory Species Advisory Panel (HMS AP) and Billfish Advisory Panel (Billfish AP) meeting in March 2005. Additionally, NMFS solicits nominations for the HMS AP and the Billfish AP. The intent of these Advisory Panel meetings is to consider alternatives for amending the fishery management plans for Atlantic highly migratory species (HMS).

DATES: The joint HMS-Billfish AP meeting will be held from 1 p.m. to 5 p.m. on Monday, March 21, 2005; from 8 a.m. to 5 p.m. on Tuesday, March 22, 2005; and from 8 a.m. to 5 p.m. on Wednesday, March 23, 2005.

Nominations must be submitted on or before October 12, 2004.

ADDRESSES: The AP meeting will be held at the Holiday Inn, 8777 Georgia Avenue (Rt. 97), Silver Spring, MD 20910. Phone: 301–589–0800.

You may submit Nominations and requests for the AP Statement of Organization, Practices, and Procedures by any of the following methods:

- Email: *ID081204B@noaa.gov*. Include in the subject line the following identifier: I.D. 081204B.
- Mail: Christopher Rogers, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Othel Freeman or Carol Douglas (301) 713–2347.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, Advisory Panels (AP) have been established to consult with NMFS in the collection and evaluation of information relevant to the HMS Fishery Management Plan (FMP) (April 1999), Amendment 1 to the HMS FMP (December 2004), and the Amendment 1 to the Billfish FMP (April 1999). Nominations are being sought to fill one-third of the posts on the HMS AP for 3–year appointment and one-half of the posts on the Billfish AP for 2–year appointments. The nomination process and appointments are required by the Statement of Organization, Practices, and Procedures for each AP.

The purpose of the HMS AP is to advise and assist the Secretary of Commerce (Secretary) in the collection and evaluation of information relevant to any amendment to the HMS FMP. The HMS AP evaluates future management options for Atlantic tunas, swordfish, and sharks under the requirements of the Magnuson-Stevens Act.

The purpose of the Billfish AP is to advise and assist the Secretary in the collection and evaluation of information relevant to any amendment to the Billfish FMP. The Billfish AP evaluates future management options for Atlantic billfish under the requirements of the Magnuson-Stevens Act.

Procedures and Guidelines

A. Procedures for Appointing the Advisory Panels

Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental entities, and non-governmental organizations will be considered for membership in the AP.

Nominations are invited from all individuals and constituent groups. Nominations should include:

1. The name of the applicant or nominee and a description of their interest in HMS or one species in particular from among sharks, swordfish, tunas, and billfish;

2. A statement of background and/or qualifications;

3. The AP to which the applicant seeks appointment;

4. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP; and

5. Outreach resources.

Tenure for the HMS AP

Member tenure will be for 3 years, with one-third of the members' terms expiring on the last day of each calendar year. All appointments will be for 3 years (36 months).

Tenure for the Billfish AP

Member tenure will be for 2 years, with one-half of the terms expiring on the last day of each calendar year. All appointments will be for 2 years (24 months).

B. Participants

The HMS AP consists of not less than 23 members who are knowledgeable about the fisheries for Atlantic HMS species. The Billfish AP consists of not less than nine members who are knowledgeable about the fisheries for Atlantic billfish species. Nominations for each AP will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community.

NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each area of interest must be adequately represented. The intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of each AP. Criteria for membership include one or more of the following: (a) experience in the recreational fishing industry involved in catching swordfish, tunas, billfish, or sharks; (b) experience in the commercial fishing industry for HMS; (c) experience in fishery-related industries (marinas, bait and tackle shops); (d) experience in the scientific community working with HMS; and/or (e) representation of a private, non-

governmental, regional, (non-Federal) state, national, or international organization representing marine fisheries, environmental, governmental or academic interests dealing with HMS.

Five additional members in each AP include one voting member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The AP also includes 22 *ex officio* participants: 20 representatives of the constituent states and two representatives of the constituent interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for each AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the AP meetings.

C. Meeting Schedule

Meetings of each AP will be held as frequently as necessary but are routinely held once each year in the spring. Often the meetings are held jointly, and may be held in conjunction with other advisory panel meetings or public hearings.

The March 2005 joint HMS-Billfish AP meeting will focus on management alternatives for Atlantic tunas, swordfish, sharks, and billfish. On July 9, 2003, NMFS published a notice of (68 FR 40907) intent to prepare an Environmental Impact Statement for Amendment 2 to the HMS FMP and Amendment 2 to the Billfish FMP. Amendment 2 to the HMS FMP is intended to: (1) address issues regarding quota allocation of Atlantic bluefin tuna, swordfish, and sharks among and within domestic fishing categories, (2) examine management alternatives to improve and streamline the current HMS limited access permit program, (3) conduct a 5–year review of HMS essential fish habitat (EFH) identifications, and (4) address exempted fishing and scientific research permitting issues consistent with rebuilding plans, the Magnuson-Stevens Act, Atlantic Tunas Convention Act (ATCA), and other relevant Federal laws. Amendment 2 to the Billfish FMP is intended to conduct a 5–year review of Atlantic billfish EFH identifications and address other issues as appropriate, consistent with the Magnuson-Stevens Act, ATCA, and other relevant Federal laws.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Othel Freeman or Carol Douglas (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Date: August 19, 2004,

Alan D. Risenhoover,

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

[FR Doc. 04–19475 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

August 20, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 25, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, carryover, and the recrediting of unused 2003 carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59919, published on October 20, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 2004.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on August 25, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I	
200–220, 224–V [2], 224–O [3], 225–227, 300–326, 360–363, 369pt., [4], 400–414, 469pt., [5], 603, 604, 611–620, 625-629, 666pt. [6], as a group	259,327,567 square meters equivalent.
Sublevels within Group I	
200	616,640 kilograms.
201	3,809,845 kilograms.
611	4,904,560 square meters.
619/620	111,556,380 square meters.
624	11,471,072 square meters.
625/626/627/628/629	20,316,622 square meters.
Group II	
237, 239pt. [7], 331pt. [8], 332–348, 351, 352, 359pt. [9], 433–438, 440–448, 459–W [10], 459pt. [11], 631pt. [12], 633–648, 651, 652, 659–H [13], 659–S [14] and 659pt. [15], as a group	595,364,797 square meters equivalent.

Category	Adjusted twelve-month limit [1]
Sublevels within Group II	
333/334/335	378,557 dozen of which not more than 191,891 dozen shall be in Category 335.
336	81,510 dozen.
338/339	1,676,292 dozen.
340	874,885 dozen of which not more than 454,268 dozen shall be in Category 340–D [16].
341	226,322 dozen.
342/642	310,007 dozen.
345	166,533 dozen.
347/348	622,513 dozen.
351/651	325,669 dozen.
352	253,429 dozen.
433	15,370 dozen.
434	7,957 dozen.
435	41,575 dozen.
436	17,763 dozen.
438	69,901 dozen.
442	60,031 dozen.
443	337,564 numbers.
444	64,205 numbers.
445/446	58,207 dozen.
447	99,306 dozen.
448	42,232 dozen.
459–W	114,240 kilograms.
631pt.	86,966 dozen pairs.
633/634/635	1,441,349 dozen of which not more than 163,446 dozen shall be in Category 633 and not more than 609,111 dozen shall be in Category 635.
636	339,423 dozen.
638/639	5,611,675 dozen.
640–O [17]	2,773,007 dozen.
641	1,184,681 dozen of which not more than 44,747 dozen shall be in Category 641–Y [18].
643	877,670 numbers.
644	1,345,328 numbers.
645/646	3,811,739 dozen.
647/648	1,552,517 dozen.
659–H	1,644,681 kilograms.
659–S	255,123 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0805, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[6] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[7] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[8] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[9] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[10] Category 459–W: only HTS number 6505.90.4090.

[11] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[12] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[13] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[14] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[15] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[16] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[17] 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[18] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–1928 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

August 20, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 25, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.cbp.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 69673, published on December 15, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on August 25, 2004, you are directed to increase the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit [1]
333	26,473 dozen.
341/641	918,776 dozen.
434	13,514 dozen.
435	45,092 dozen.
440	2,831 dozen.
447	58,353 dozen.
448	35,754 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–1929 Filed 8–24–04; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Safety Standard for Bicycle Helmets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of June 9, 2004 (69 FR 32329), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval of the collection of information in the safety standard for bicycle helmets (16 CFR part 1203). These regulations establish testing and recordkeeping requirements for manufacturers and importers of bicycle helmets subject to the standard. No comments were received in response to the notice. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information without change for a period of three years from the date of approval.

SUPPLEMENTARY INFORMATION: In 1994, Congress passed the ''Child Safety Protection Act,'' which, among other things, included the ''Children's Bicycle Helmet Safety Act of 1994'' (Pub. L. 103–267, 108 Stat. 726). This law directed the Commission to issue a final standard applicable to bicycle helmets that would replace several existing voluntary standards with a single uniform standard that would include provisions to protect against the risk of helmets coming off the heads of bicycle riders, address the risk of injury to children, and cover other issues as appropriate. The Commission issued the final bicycle helmet standard in 1998. It is codified at 16 CFR part 1203.

The standard requires all bicycle helmets manufactured after March 10, 1999, to meet impact-attenuation and other requirements. The standard also contains testing and recordkeeping requirements to ensure that bicycle helmets meet the standard's requirements. Certification regulations implementing the standard require manufacturers, importers, and private labelers of bicycle helmets subject to the standard to (1) perform tests to demonstrate that those products meet the requirements of the standard, (2) maintain records of those tests, and (3) affix permanent labels to the helmets stating that the helmet complies with the applicable standard. The certification regulations are codified at 16 CFR part 1203, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of bicycle helmets subject to the standard to help protect the public from risks of injury or death due to head injury associated with bicycle riding. More specifically, this information helps the Commission determine whether bicycle helmets subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if bicycle helmets fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

Additional Information About the Request for Extension_of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for BicycleHelmets (16 CFR part 1203).

Type of request: Extension of approval.

General description of respondents: Manufacturers, importers, and private labelers of bicycle helmets.

Estimated number of respondents: 30.

Estimated average number of hours per respondent: 670–1,000 hours per year.

Estimated cost of collection for all respondents: $489,600–$734,400/year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by September 24, 2004 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7671, or by e-mail to *lglatz@cpsc.gov.*

Dated: August 19, 2004.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–19396 Filed 8–24–04; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 25, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) Department of Defense Education Activity, 4040 N. Fairfax Drive, Arlington, VA 22203, ATTN: Sara Riggs.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 588–3934.

Title, Associated Form, and OMB Control Number: Department of Defense Dependents Schools (DoDDS) Employment Opportunities for Educators; DoDEA Forms 5010, 5011, 5012, and 5013; OMB Number 0704–0370.

Needs of Uses: This information collection requirement is necessary to obtain information on prospective applicants for educator positions within the Department of Defense Dependents Schools. The information is used to verify employment history of educator applicants and to determine creditable previous experience for pay-setting purposes on candidates selected for positions. In addition, the information is used to ensure that those individuals selected for employment with the Department of Defense Dependents Schools possess the abilities and personal traits which give promise of outstanding success under the unusual circumstances they will find working abroad. Information gathered is also used to ensure that the Department of Defense Dependents Schools personnel practices meet the requirements of Federal law. Completion of the forms is entirely voluntary with the exception of the form requesting a professional evaluation of the applicant. This information is gathered from those in supervisory and managerial positions to ascertain information is relative to educator's personality and professional abilities.

Affected Public: Individuals and households.

Annual Burden Hours: 11,200.

Number of Respondents: 24,000.

Responses Per Respondent: 1.

Average Burden Per Response: 28.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The primary objective of the information collection is to ensure quality education from prekindergarten through grade 12 for the eligible minor dependents of the Department of Defense military and civilian personnel on official overseas assignments. This is accomplished by securing data from applicants for educational positions and officials with sufficient information to address the applicant's traits and characteristics.

The forms associated with this data collection include:

Department of Defense Dependents Schools Supplemental Application for Overseas Employment (DoDEA Form 5010). The primary objective of this voluntary form is to ascertain applicant's eligibility for educator positions.

Department of Defense Dependents Schools Professional Evaluation (DoDEA Form 5011). This form is provided to officials in managerial and supervisory positions as a means of verifying abilities and personal traits of applicants for educator positions to ensure the selection of the best qualified individual to occupy educator positions.

Department of Defense Dependents Schools Voluntary Questionnaire (DoDEA Form 5012). This voluntary form helps to ensure that the Department of Defense Dependents Schools' personnel practices meet the requirements of Federal law.

Department of Defense Dependents Schools Verification of Professional Educator Employment for Salary Rating Purposes (DoDEA Form 5013). The purpose of this voluntary form is to verify employment history of educator applicants and to determine creditable previous experience for pay-setting purposes on selected candidates.

Dated: August 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–19383 Filed 8–24–04; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed 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 proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 25, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Logistics Agency Headquarters, ATTN: Mr. Mark Vincent, DI, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call (703) 767–2507.

Title; Associated Form; and OMB Number: End-Use Certificate, DLA Form 1822, OMB No. 0704–0382.

Needs and Uses: All individuals wishing to acquire government property identified as Munitions List Items (MLI) or Commerce Control List Item (CCLI) must complete this form each time they enter into a transaction. It is used to clear recipients to ensure their eligibility to conduct business with the government. That they are not debarred

bidders; Specially Designated Nationals (SDN) or Blocked Persons; have not violated U.S. export laws; will not divert the property to denied/sanctioned countries, unauthorized destinations or sell to debarred/Bidder Experience List firms or individuals. The EUC informs the recipients that when this property is to be exported, they must comply with the International Traffic in Arms Regulation (ITAR), 22 CFR 120 *et seq.;* Export Administration Regulations (EAR), 15 CFR 730 *et seq.;* Office of Foreign Asset Controls (OFAC), 31 CFR 500 *et seq.;* and the United States Customs Service rules and regulations.

Affected Public: Individuals; businesses or other for profit; not-for-profit institutions.

Annual Burden Hours: 13,200.

Number of Respondents: 40,000.

Responses Per Respondent: 1.

Average Burden Per Response: 0.33 hours (20 minutes).

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals/businesses who receive defense property identified as Munitions List Items and Commerce Control List Items through: Purchase, exchange/trade, or donation. They are checked to determine if they are responsible, not debarred bidders, Specially Designated Nationals or Blocked Persons, or have not violated U.S. export laws.

The form is available on the DOD DEMIL/TSC web page, Defense Reutilization and Marketing Service sales catalogs and web page, Defense Contract Management Agency offices, FormFlow and ProForm.

Dated: August 19, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–19384 Filed 8–24–04; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Munitions System Reliability will meet in closed session on September 23–24, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will review the efforts thus far to improve the reliability of munitions systems and identify additional steps to be taken to reduce the amount of unexploded ordnance resulting from munitions failures. The Task Force will: Conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: August 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–19385 Filed 8–24–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary;

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Red Lessons Learned will meet in closed session on August 31, 2004, and September 21, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will assess what useful information can our adversaries learn from U.S. military engagement and, particularly, what might they have learned from Operation Iraqi Freedom and Operation Enduring Freedom; identify the channels through which adversaries learn about U.S. capabilities; is there any evidence an adversary is adjusting to U.S. capabilities and what might the U.S. do to counter this; what are the indicators or observables that the Intelligence Community can focus on to determine if an adversary is engaging in this type of practice and do the indicators change in peacetime or wartime; do different technology insertion models exist; is there any evidence potential adversaries are targeting the seams in the U.S. command and control alignment and planning process; and the preceding areas of concern focus primarily on the military operations phases, are the potential adversaries observing, analyzing and adapting during the preparation and stabilization phase?

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: August 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–19386 Filed 8–24–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Industry Forum on the DoD Utilities Privatization Program

AGENCY: Department of Defense.

SUMMARY: The Office of the Deputy Under Secretary of Defense for Installations and Environment will lead an Industry Forum on the DoD Utilities Privatization Program. The forum will occur during the Defense Energy Support Center's (DESC) 2004 Worldwide Energy Conference from 12 to 5 on Wednesday, September 29th, in

the Grand Ballroom of the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia.

A panel of DoD Representatives will provide an update and address issues submitted in advance by the industry. Please submit your issues and/or proposed topics to *james.reed@bearingpoint.com* by August 30, 2004, with a copy to *Richard.Marrs@osd.mil.*

As practical, industry representatives will also be invited to present topics or issues to the group. If you would like to present an issue, please provide an outline of your presentation to *james.reed@bearingpoint.com* by August 27, 2004 with a copy to *Richard.Marrs@osd.mil.* Please plan to limit the presentation to 10 minutes.

Your assistance in providing issues prior to the forum will help ensure an efficient use of the time available. There will also be opportunities to raise issues during the forum, but time constraints may require a follow up response. A summary of all issues addressed will be provided following the forum. If you would like to be placed on the mailing list for the summary, please notify *james.reed@bearingpoint.com.*

Additional details on the industry forum will be provided. For more information on the DESC 2004 Worldwide Energy Conference, please visit *http://www.desc.dla.mil/.*

Dated: August 19, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–19387 Filed 8–24–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Wednesday, September 8, 2004; 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Dynamic verification.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on August 19, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–19419 Filed 8–24–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, September 21, 2004, 8 a.m.–6 p.m.,Wednesday, September 22, 2004, 8 a.m.–5 p.m.

Opportunities for public participation will be held Tuesday, September 21, from 12:15 to 12:30 p.m. and 5:45 to 6 p.m., and on Wednesday, September 22, from 11:45 a.m. to 12 noon and 3:30 to 3:45 p.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Sun Valley Inn, One Sun Valley Road, Sun Valley, ID 83353.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Hinman, INEEL CAB Administrator, North Wind, Inc., P.O. Box 51174, Idaho Falls, ID 83405, Phone (208) 557-7885, or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Peggy Hinman for the most current agenda or visit the CAB's Internet site at *http://www.ida.net/users/cab/*):

- Snake River Aquifer Protection.
- Waste With No Path for Disposition (Orphan Waste).
- Site-wide Groundwater Monitoring, Including Results of Annual Off-site and On-site Environmental Monitoring.
- Test Reactor Area Catch Tanks.
- Fast Flux Text Facility Decommissioning Impacts to INEEL.
- The Chemical Processing Plant at INEEL.
- Other Issues and Topics of Interest.

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy

Designated Federal Officer, Richard Provencher, Assistant Manager for Environmental Management, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Peggy Hinman, INEEL CAB Administrator, at the address and phone number listed above.

Issued at Washington, DC, on August 19, 2004.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–19420 Filed 8–24–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, September 27, 2004, 1 p.m.–5 p.m.; Tuesday, September 28, 2004, 8:30 a.m.–4 p.m.

ADDRESSES: Ramada Limited, 2100 Boundary Street, Beaufort, SC 29902.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agendas

Monday, September 27, 2004

1 p.m. Combined committee session.

4:30 p.m. Executive committee meeting.

5 p.m. Adjourn.

Tuesday, September 28, 2004

8:30 a.m. Approval of minutes, agency updates.

8:45 a.m. Public comment session.

9 a.m. Chair and facilitator update.

9:30 a.m. Waste Management Committee report.

10:45 a.m. Facility Disposition & Site Remediation Committee report.

11:45 a.m. Public comment session.

12 noon Lunch.

1 p.m. Closure business unit update.

1:45 p.m. Nuclear Materials Committee report.

2:30 p.m. Strategic & Legacy Management Committee report.

3:15 p.m. Administrative Committee report.

3:45 p.m. Public comment session.

4 p.m. Adjourn.

A final agenda will be available at the meeting Monday, September 27, 2004.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC, on August 20, 2004.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–19421 Filed 8–24–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S. Drilling Group, Inc.; Notice of Intent to Grant Exclusive Patent License

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given to an intent to grant to U.S. Drilling Group Inc., of Franklin, TN, an exclusive license to practice the invention described in U.S. Patent No. 6,251,279, entitled ''Thermally Conductive Cementitious Grout For Geothermal Heat Pump Systems''. The invention is owned by the United States of America, as represented by the U.S. Department of Energy (DOE).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than September 24, 2004.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: John T. Lucas, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586–2939.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209 provides federal agencies with authority to grant exclusive licenses in federally-owned inventions, if, among other things, the agency finds that the public will be served by the granting of the license. The statute requires that no exclusive license may be granted unless public notice of the intent to grant the license has been provided, and the agency has considered all comments received in response to that public notice, before the end of the comment period.

U.S. Drilling Group Inc., of Franklin, TN has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 6,251,179, and has plans for commercialization of the invention.

The exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to negotiate to grant the license, unless, within 30 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy,

Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reason(s) why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all timely written responses to this notice, and will proceed with negotiating the license if, after consideration of written responses to this notice, a finding is made that the license is in the public interest.

Issued in Washington, DC, on August 19, 2004.

Robert J. Marchick,

Acting Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 04–19422 Filed 8–24–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–394–000]

Dominion Transmission, Inc.; Notice of Application

August 17, 2004.

Take notice that on August 10, 2004, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, Virginia 23219, filed in Docket No. CP04–394–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a storage/injection well in the Bridgeport Storage Complex located in Harrison County, West Virginia, all as more fully set forth in the application.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this request may be directed to Anne E. Bomar, Managing Director, Transmission, Rates and Regulation, 120 Tredegar Street, Richmond, Virginia 23219, or call (804) 819–2134.

Specifically, DTI proposes to abandon Well No. 5111 because in February 2002, DTI states that it determined to stop using Well No. 5111 for storage injection/withdrawal purposes because of economic development of the properties in the immediate vicinity of the well. To that end, DTI states that it placed a plug in the well at the time; however, DTI further states that it has determined that the plug was inadvertently set below the perforations and the well was unintentionally shut in. Consequently, DTI avers that Well No. 5111 cannot be restored to use as a storage injection/withdrawal well.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made 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. 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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: September 7, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1898 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–61–003]

El Paso Natural Gas Company; Notice of Compliance Filing

August 18, 2004.

Take notice that on August 10, 2004, El Paso Natural Gas Company (El Paso) submitted a compliance filing pursuant to the Commission's orders issued January 28, 2004 and April 20, 2004 in Docket Nos. RP04–61–000 and 001.

El Paso states that the letter is to report to the Commission, in accordance with Section 4.10(d)(iii) of the General Terms and Conditions of its Tariff, that there were no instances where directional transfer scheduling was suspended on its system during the first six months of implementation, February 1, 2004 through July 31, 2004.

El Paso states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu

of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1914 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–589–002]

Iroquois Gas Transmission System, L.P.; Notice of Refund Report

August 18, 2004.

Take notice that on August 16 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing its Transportation Cost Rate Adjustment (TCRA) refund report.

In accordance with the terms of its Stipulation and Agreement that was approved by the Commission on October 24, 2003, Iroquois proposed the elimination of its TCRA. In that filing, Iroquois noted that it would calculate the amount of any net credit or debit balance in the applicable Account No. 186 sub-account and would allocate such balance to the affected shippers in proportion to their applicable billing determinants during the preceding twelve months.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on August 25, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1906 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–015]

Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rate

August 18, 2004.

Take notice that on August 16, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, proposed to become effective August 16, 2004:

Original Sheet No. 6D
Original Sheet No. 6E

Iroquois states that the revised tariff sheets reflect a negotiated rate between Iroquois and Virginia Power Energy Marketing, Inc. (Virginia Power) for transportation under Rate Schedule RTS beginning August 16, 2004 through November 1, 2012.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested State regulatory agencies and all parties to the proceeding.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1915 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT04–2–003; ER04–116–00; ER04–157–007; and EL01–39–003]

ISO New England Inc., et al.; Bangor Hydro-Electric Company, et al.; The Consumers of New England v. New England Power Pool; Notice of Compliance Filing

August 17, 2004.

Take notice that on August 11, 2004, ISO New England Inc and the New England Transmission Owners (ISO) submitted a report in compliance with the Commission's March 24, 2004 in Docket No. RT04–2–000, *et al.,* 106 FERC ¶61,280 (2004).

ISO states that copies of the filing have been served upon all parties to this proceeding, upon all NEPOOL Participants (electronically), non-Participant Transmission Customers, and the governors and regulatory agencies of the six New England States.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 1, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1896 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–452–000]

MIGC, Inc.; Notice of Tariff Filing

August 18, 2004.

Take notice that on August 10, 2004, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 4, with a proposed effective date of October 1, 2004.

MIGC states that the purpose of the filing is to reflect the Annual Charge Adjustment (ACA) unit charge authorized by the Commission for the fiscal year beginning October 1, 2004, pursuant to 18 CFR 154.402 (a).

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested State commissions.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1909 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–483–002]

Northwest Pipeline Corporation; Notice of Park and Loan Activity Report

August 18, 2004.

Take notice that on August 11, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing a Park and Loan Activity Report.

Northwest states that this report complies with the Commission's order issued June 25, 2003 in Docket No. RP03–483–000 wherein the Commission directed Northwest to file an activity report detailing Northwest's experience with the implementation of park and loan service at the Jackson Prairie storage facility after one full year's operation.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on August 25, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1905 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-40-037]

Panhandle Eastern Pipe Line Company, LP; Notice of Supplemental Refund Report

August 18, 2004.

Take notice that on August 11, 2004, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing its Supplemental Refund Report. Panhandle states that the Commission issued an order on July 12, 2004 which rejected Panhandle's Refund Report, directed Panhandle to flowthrough to its customers amounts received from Southland Royalty Company / Burlington Resources Oil & Gas Company LP (Burlington), and required Panhandle to submit a refund report by August 11, 2004.

Panhandle states that a copy of this information is being sent to intervenors in the subject proceeding, Non-Settling First Sellers, Panhandle's affected customers, and respective State Regulatory Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208-3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on August 25, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1900 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-454-000]

Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff

August 18, 2004.

Take notice that on August 13, 2004, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective September 13, 2004:

First Revised Sheet No. 230
Original Sheet Nos. 230A through 230G

Panhandle states that this filing is being made to propose generally applicable tariff provisions that offer contract demand reduction rights under specified circumstances. In particular, Panhandle states that it proposes to allow shippers to elect from four types of contract demand reduction options if they meet the eligibility requirements set forth in the tariff. They include (1) regulatory unbundling, (2) loss of load, (3) plant outage and (4) buyout.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208-3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1911 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–944–000]

Reliant Energy Wholesale Generation, LLC; Notice of Issuance of Order

August 18, 2004.

Reliant Energy Wholesale Generation, LLC (REWG) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of energy, capacity and ancillary services at market-based rates. REWG also

requested waiver of various Commission regulations. In particular, REWG requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by REWG.

On August 16, 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 REWG 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 protest, is September 15, 2004.

Absent a request to be heard in opposition by the deadline above, REWG is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, 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 REWG, 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 REWG's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 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 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1901 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–455–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 18, 2004.

Take notice that on August 12, 2004, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised sheets to become effective October 1, 2004:

Sixth Revised Sheet No. 19
Fifth Revised Sheet No. 38
Fifth Revised Sheet No. 40
Sixth Revised Sheet No. 49
Fifth Revised Sheet No. 51A
Seventh Revised Sheet No. 60

Southern states that the proposed tariff sheets are filed in response to the Commission's order issued August 9, 2004, which approved Southern's request to abandon certain facilities located in Shelby County, Texas and DeSoto Parish, Louisiana (Logansport Gathering System) by sale to Dominion Gas Ventures, Inc. or its designee, and ordered Southern to make a Section 4 filing at least 30 days prior to the effective date of the transfer of the Logansport Gathering System to delete the gathering rates from its tariff and to make any other conforming tariff changes to reflect the sale and abandonment.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1912 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–349–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 18, 2004.

Take notice that on August 13, 2004, Tennessee Gas Pipeline Company (Tennessee) submitted a compliance filing pursuant to the Commission's order issued on July 30, 2004, in Docket No. RP04–349–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1907 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–162–013]

Trailblazer Pipeline Company; Notice of Refund Report

August 18, 2004.

Take notice that on August 12, 2004, Trailblazer Pipeline Company (Trailblazer) submitted its Revised Refund Report pursuant to the Commission's Order issued July 13, 2004, in Docket No. RP03–162–011.

Trailblazer states that copies of its filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on August 25, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1904 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–453–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 18, 2004.

Take notice that on August 13, 2004, Transcontinental Gas Pipe Line Corporation tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-Sixth Revised Sheet No. 28, to become effective August 1, 2004.

Transco states that the purpose of the filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. Transco also states that this filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff. Transco indicates that included in Appendix A attached to the filing is the explanation of the rate changes and details regarding the computation of the revised S–2 rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1910 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–449–001]

Trunkline Gas Company, LLC; Notice of Tariff Filing

August 18, 2004.

Take notice that on August 11, 2004, Trunkline Gas Company, LLC (Trunkline) tendered for filing Third Revised Sheet No. 2 as part of its FERC Gas Tariff, Third Revised Volume No. 1 proposed to become effective September 10, 2004.

Trunkline states that this filing is being made to replace Second Revised Sheet No. 2, which was inadvertently submitted in the subject docket on August 9, 2004.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1908 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–456–000]

Venice Gathering System, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 18, 2004.

Take notice that, on August 16, 2004, Venice Gathering System, L.L.C. tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective September 22, 2004:

Second Revised Sheet No. 46
Third Revised Sheet No. 187
First Revised Sheet No. 201
First Revised Sheet No. 205

Venice states that the purpose of this filing is to revise its tariff in order to comply with the Commission's Order Nos. 2004, *et seq.* and part 358 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1913 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–77–000, et al.]

Reliant Energy Wholesale Generation, LLC, et al.; Electric Rate and Corporate Filings

August 18, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Reliant Energy Wholesale Generation, LLC.

[Docket No. EG04–77–000]

Take notice that on August 13, 2004 Reliant Energy Wholesale Generation, LLC (REWG) submitted a supplement to its application filed on June 21, 2004 in Docket No. EG04–77–000 for a determination of exempt wholesale generator status within the meaning of section 32(a) of the Public Utility Holding Company Act of 1935.

Comment Date: 5 p.m. eastern time on September 3, 2004.

2. Texas Genco II, LP

[Docket No. EG04–95–000]

Take notice that on August 12, 2004, Texas Genco II, LP (Genco II) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 USC 79z–5a(a)(1) (2000), and Subchapter T, Part 365 of the regulations of the Commission, 18 CFR Part 365 (2003).

Genco II states that it is limited to a partnership organized and existing under the laws of the State of Texas that will own and operate eleven electric generating facilities, with an aggregate maximum capacity of approximately 13,400 megawatts, located in Texas. Genco II states that it will be engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of PUHCA, and will be exclusively in the business of owning eligible facilities, and selling electric energy at wholesale.

Comment Date: 5 p.m. eastern time on September 2, 2004.

3. *Tenaska Power Services Co.,* v. *Midwest Independent Transmission System Operator, Inc.* and *Cargill Power Markets, LLC* v. *Midwest Independent Transmission System Operator, Inc.*

[Docket No. EL04–43–003 and EL04–46–003 (Not Consolidated)]

Take notice that on August 12, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a correction to its August 9, 2004 compliance filing in Docket Nos. EL04–43–002 and EL04–46–002.

Midwest ISO states that the filing has been served electronically upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions in the region.

Comment Date: 5 p.m. eastern time on August 25, 2004.

4. CMS Generation Michigan Power, L.L.C.

[Docket No. ER99–3677–002]

Take notice that on August 12, 2004, CMS Generation Michigan Power, L.L.C. (MI Power) submitted a revised generation market analysis in compliance with the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004).

MI Power states that a copy of the filing was served upon the Michigan Public Service Commission and those on the official service list in MI Power's pending market power analysis proceeding, Docket No. ER99–3677–000.

Comment Date: 5 p.m. eastern time on September 2, 2004.

5. Dearborn Industrial Generation, L.L.C.

[Docket No. ER01–570–003]

Take notice that on August 12, 2004, Dearborn Industrial Generation, L.L.C. (DIG) submitted a revised generation market analysis in compliance with the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004).

DIG states that a copy of the filing was served upon the Michigan Public Service Commission and those on the official service list in DIG's pending market power analysis proceeding, Docket Nos. ER01–570–000 and 001.

Comment Date: 5 p.m. eastern time on September 2, 2004.

6. CMS Energy Resource Management Company

[Docket No. ER04–543–003]

Take notice that on August 12, 2004, CMS Energy Resource Management Company (ERM) submitted a revised generation market analysis in compliance with the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004).

ERM states that a copy of the filing was served upon the Michigan Public Service Commission and those on the official service list in ERM's pending market power analysis proceeding, Docket No. ER96–2350–023.

Comment Date: 5 p.m. eastern time on September 2, 2004.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER04–866–001]

Take notice that on July 13, 2004 Consolidated Edison Company of New York, Inc. (ConEdison) submitted an amendment to its May 24, 2004 filing in Docket No. ER04–866–000. ConEdison submitted First Revised Sheets Nos. 13 and 23 to its Rate Schedule No. 2.

Comment Date: 5 p.m. eastern time on August 25, 2004.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–1112–000]

Take notice that on August 11, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession of the Amendment and Restatement of the April 1, 2001 Generator Interconnection Agreement between Michigan Electric Transmission Company and Consumers Energy Company from the Midwest ISO Joint Open Access Transmission Tariff (JOATT) to the Midwest ISO Open Access Transmission Tariff (OATT). The Midwest ISO requests an effective date of January 1, 2003.

Midwest ISO states that it has served a copy of this filing upon the affected customers. In addition, the Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on September 1, 2004.

9. Kentucky Utilities Company

[Docket No. ER04–1114–000]

Take notice that on August 12, 2004, Kentucky Utilities (KU), a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet No. 8 to KU's Rate Schedule No. 310, an amendment to the contract between KU and the City of Falmouth, Kentucky.

Comment Date: 5 p.m. eastern time on September 2, 2004.

10. Kentucky Utilities Company

[Docket No. ER04–1115–000

Take notice that on August 12, 2004, Kentucky Utilities (KU), a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet No. 8 and No. 9 to KU's Rate Schedule No. 309, an amendment to the contract between KU and the City of Corbin, Kentucky.

Comment Date: 5 p.m. eastern time on September 2, 2004.

11. Kentucky Utilities Company

[Docket No. ER04–1116–000]

Take notice that on August 12, 2004, Kentucky Utilities (KU), a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet No. 8 to KU's Rate Schedule No. 311, an amendment to the contract between KU and the City of Frankfort, Kentucky.

Comment Date: 5 p.m. eastern time on September 2, 2004.

12. Kentucky Utilities Company

[Docket No. ER04–1117–000]

Take notice that on August 12, 2004, Kentucky Utilities (KU), a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet No. 8 to KU's Rate Schedule No. 304, an amendment to the contract between KU and the City of Barbourville, Kentucky.

Comment Date: 5 p.m. eastern time on September 2, 2004.

13. Kentucky Utilities Company

[Docket No. ER04–1118–000]

Take notice that on August 12, 2004, Kentucky Utilities (KU), a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet No. 8, No. 9, No. 10, No. 11, No. 12 and No. 13 to KU's Rate Schedule No. 306, an amendment to the contract between KU and the City of Madisonville, Kentucky.

Comment Date: 5 p.m. eastern time on September 2, 2004.

14. Kentucky Utilities Company

[Docket No. ER04–1119–000]

Take notice that on August 12, 2004, Kentucky Utilities (KU), a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet No. 8, No. 9, No. 10 and No. 11 to KU's Rate Schedule No. 307, an amendment to the contract between KU and the City of Nicholasville, Kentucky.

Comment Date: 5 p.m. eastern time on September 2, 2004.

15. Kentucky Utilities Company

[Docket No. ER04–1120–000]

Take notice that on August 12, 2004, Kentucky Utilities (KU), a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet No. 8 to KU's Rate

Schedule No. 308, an amendment to the contract between KU and the City of Benham, Kentucky.

Comment Date: 5 p.m. eastern time on September 2, 2004.

16. Kentucky Utilities Company

[Docket No. ER04–1121–000]

Take notice that on August 12, 2004, Kentucky Utilities (KU), a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet No. 8 and No. 9 to KU's Rate Schedule No. 305, an amendment to the contract between KU and the City of Providence, Kentucky.

Comment Date: 5 p.m. eastern time on September 2, 2004.

17. Kentucky Utilities Company

[Docket No. ER04–1122–000]

Take notice that on August 12, 2004, Kentucky Utilities (KU), a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet No. 8 and No. 9 to KU's Rate Schedule No. 301, an amendment to the contract between KU and the City of Paris, Kentucky.

Comment Date: 5 p.m. eastern time on September 2, 2004.

18. PJM Interconnection, L.L.C.

[Docket No. ER04–1123–000]

Take notice that on August 12, 2004. PJM Interconnection, L.L.C. (PJM), submitted for filing Original Service Agreement No. 1126 under PJM's FERC Electric Tariff Sixth revised Volume No. 1, an interim interconnection service agreement among PJM, Wind Park Bear Creek, LLC, and PPL Electric Utilities Corporation. PJM requests an effective date of July 13, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on September 2, 2004.

19. PJM Interconnection, L.L.C.

[Docket No. ER04–1124–000]

Take notice that on August 12, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing Second Revised Service Agreement No. 896 under PJM's FERC Electric Tariff Sixth Revised Volume No. 1, a revised interconnection service agreement among PJM, Waymart Wind Farm, L.P., and PPL Electric Utilities Corporation. PJM requests an effective date of July 13, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on September 2, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502-8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1899 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License and Soliciting Comments, Motions To Intervene, and Protests

August 17, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request to amend license to delete article 402.

b. *Project No.:* 2438–030.

c. *Date Filed:* July 12, 2004.

d. *Applicant:* Seneca Falls Power Corporation.

e. *Name of Project:* Waterloo and Seneca Falls Project.

f. *Location:* The project is located on the Seneca River section of the New York State Canal System, between Seneca and Cayuga Lake, in Cayuga, Seneca, Yates, Schuyler, and Ontario Counties, New York.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. Scott Goodwin, Seneca Falls Power Corporation, 3330 Clayton Road, Suite B, Concord, CA 94519, (925) 692–2198.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon (202) 502–8887, or *diana.shannon@ferc.gov.*

j. *Deadline for filing motions to intervene, protests, comments:* September 20, 2004.

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 on 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.

k. *Description of Proposed Action:* The licensee states conflicting operating requirements exist in the license. Article 402 requires run-of-river operation, while article 405 requires the licensee to operate the project within certain reservoir elevations and operate the project in accordance with a rule curve developed by the New York State Thruway Authority and the New York State Electric and Gas Corporation (the previous licensee). The licensee requests that the discrepancy in operating requirements be clarified and/or remove the run-of-river requirement contained in article 402.

l. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, 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.

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 and 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'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the docket number (P–2438–030) 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 under the ''e-Filing'' link. The Commission strongly encourages e-filings. All documents should be filed with: 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.

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 representative.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1897 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments

August 18, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Extension of Time.

b. *Project No.:* 11437–012.

c. *Date Filed:* June 15, 2004.

d. *Applicant:* Hydro Matrix Partnership, Ltd.

e. *Name of Project:* Jordan Dam Hydroelectric Project.

f. *Location:* The project is located on the Haw River in Chatham County, North Carolina.

g. *Pursuant to:* Public Law 107–322, 116 STAT. 2786.

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, (202) 408–5400.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing comments and or motions:* September 20, 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. Please include the project number (P–11437–012) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents 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 Project:* The licensee requests that the Commission grant two consecutive two-year extensions of time from the existing deadline of June 25, 2001 to June 25, 2005, to commence project construction of the Jordan Dam Hydroelectric Project. If granted, the licensee would have one 2-year extension remaining, of the three authorized by Public Law No. 107–332.

l. *Locations of Applications:* 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 D.C. 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site *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 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, .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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1902 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–223–000 and CP04–293–000]

KeySpan LNG, L.P.; Notice of Technical Conference

August 18, 2004.

On Thursday, September 9, 2004, at 9 a.m. (e.d.t.), staff of the Office of Energy Projects will convene a cryogenic design and technical conference regarding the proposed KeySpan LNG Facility Upgrade Project. The cryogenic conference will be held in the North Rosemoor Ballroom at the Holiday Inn at 21 Atwell Avenue, Providence, Rhode Island. In view of the nature of security issues to be explored, the cryogenic conference will not be open to the public. Attendance at this conference will be limited to existing parties to the proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested Federal, State, and local agencies. Any person planning to attend the September 9 cryogenic conference must register by close of business on Tuesday, September 7, 2004. Registrations may be submitted either online at *http://www.ferc.gov/whats-new/registration/cryo-0909-form.asp* or by faxing a copy of the form (found at the referenced online link) to (202) 208–2106. All attendees must sign a non-disclosure statement prior to entering the conference. For additional information regarding the cryogenic conference, please contact Heather Ferree at *heather.ferree@ferc.gov* or call (202) 502–6414.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1916 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2150-033]

Puget Sound Energy; Notice of Meeting on Baker River Project Relicensing

August 18, 2004.

The Commission hereby gives notice that members of its staff will participate in a conference call with Puget Sound Energy; the Washington Department of Ecology; Skagit and Whatcom Counties, Washington; the Town of Concrete, Washington; and others on September 1, 2004, from 10 a.m. to 1 p.m. (p.t.). The purpose of the conference call is to discuss the status of any water quality certificate, Coastal Zone Management Act consistency determination, and shoreline substantial development permits needed for the project and the processes and schedules for obtaining these documents. The meeting is open to the public and anyone may join the conference call. Please contact Steve Hocking at (202) 502-8753 or *steve.hocking@ferc.gov* for instructions to join the conference call.

During the course of the meeting, it is possible that the discussion may address matters pending in the above-captioned docket.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1903 Filed 8–24–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0090, FRL–7806–7]

Agency Information Collection Activities: Continuing Collection; Comment Request; Gasoline Volatility, EPA ICR Number 1367.07, OMB Control Number 2060–0178

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing collection. This ICR is scheduled to expire on December 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 25, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0090, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Air and Radiation Docket, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2801; e-mail address: *caldwell.jim@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2004–0090, which is available for public viewing at the Office of Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. UseEDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are those which produce or import gasoline containing ethanol, or who wish to obtain a testing exemption.

Title: Regulation of Fuels and Fuel Additives; Gasoline Volatility; Reporting Requirements for Parties Which Produce or Import Gasoline Containing Ethanol, and Reporting Requirements for Parties Seeking a Testing Exemption (40 CFR 80.27), EPA ICR Number 1367.07.

OMB Control Number: 2060–0178, expiring 12–31–04.

Abstract: Gasoline volatility, as measured by Reid Vapor Pressure (RVP) in pounds per square inch (psi), is controlled in the spring and summer in order to minimize evaporative hydrocarbon emissions from motor vehicles. RVP is subject to a Federal standard of 7.8 psi or 9.0 psi, depending on location. The addition of ethanol to gasoline increases the RVP by about 1 psi. Gasoline that contains at least 9 volume percent ethanol is subject to a standard that is 1.0 psi greater. As an aid to industry compliance and EPA enforcement, the product transfer document, which is prepared by the producer or importer and which accompanies a shipment of gasoline containing ethanol, is required by regulation to contain a legible and conspicuous statement that the gasoline contains ethanol and the percentage concentration of ethanol. This is intended to deter the mixing within the distribution system, particularly in retail storage tanks, of gasoline which contains ethanol with gasoline which does not contain ethanol. Such mixing would likely result in a gasoline with an ethanol concentration of less than 9 volume percent but with an RVP above the standard. Also, a party wishing a testing exemption for research on gasoline that is not in compliance with the applicable volatility standard, must submit certain information to EPA. 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.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: EPA estimates that there at 4,600,000 shipments annually of gasoline containing ethanol. Thus the required statement must be placed on 4,600,000 product transfer documents annually. Such documents are generated by the producer or importer as a customary business practice, so the burden is limited to the placement of the statement, which is generally computer-generated or hand-stamped. EPA estimates an average burden of 5 seconds per document, for a total annual burden for 4,600,000 documents of 6,389 hours. At an estimated industry labor cost of $65 per hour, EPA estimates the labor cost burden at $415,285 for about 1,500 parties that produce or import gasoline containing ethanol. Thus the cost per party is about $277 annually. Annualized start-up costs are estimated at $3,250, based on 50 new producers or importers of gasoline with ethanol each year, and a burden of one hour each to implement the requirement. There are no annualized capital costs and no operation and maintenance costs because the product transfer documents are in use for other reasons, and there are no recordkeeping requirements. There are no purchase-of-services costs. It is estimated that EPA will receive 2 requests annually for testing exemptions, at 4 hours burden and $260 labor cost per request, for a total of $520. An operating and maintenance cost for postage and copying of $10 per request is estimated, for a total of $20. 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.

Dated: August 18, 2004.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 04–19440 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7805–9]

Science Advisory Board Staff Office, Environmental Economics Advisory Committee; Notification of Public Advisory Committee Meeting (Teleconference)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency), Science Advisory Board (SAB) Staff Office announces a public teleconference for the SAB Environmental Economics Advisory Committee (EEAC) to discuss follow-on matters related to its consultation on the valuation of mortality risk reduction.

DATES: The teleconference will take place on Monday, September 20, 2004, from 1 p.m. to 2:30 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-numbers and access codes or who wishes to submit written or brief oral comments (five minutes or less), must contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail: (202) 343–9867.

Requests to provide oral comments must be *in writing* (e-mail, fax, or mail) and received by Dr. Stallworth no later than five business days prior to the teleconference in order to reserve time on the meeting agenda. It is the policy of the EPA Science Advisory Board Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible.

SUPPLEMENTARY INFORMATION:

Background: The EEAC, a committee of the EPA Science Advisory Board, is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The EEAC is charged with providing advice, information and

recommendations through the chartered SAB to the Agency on the economic issues associated with various EPA programs.

The EEAC held a public meeting in Washington, DC on May 13, 2004 to provide consultative advice to the EPA National Center for Environmental Economics on the valuation of mortality risk reduction. Background on this review was provided in a **Federal Register** notice published on April 22, 2004 (Vol. 69, No. 78). Minutes of the May 13, 2004 consultation are available on the SAB Web site. The meeting agenda for the September 20, 2004 teleconference will continue this consultative project with a discussion of four questions related to the valuation of mortality risk reduction. This agenda will be posted on the SAB Web site at: *http://www.epa.gov/sab* prior to the meeting.

Dated: August 12, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–19437 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7806–1]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC) Notification of Advisory Committee Meeting of the CASAC Particulate Matter Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee's (CASAC) Particulate Matter (PM) Review Panel to discuss follow-on matters related to its ongoing peer review of the *EPA Air Quality Criteria Document for Particulate Matter (Fourth External Review Draft*).

DATES: The teleconference meeting will be held September 20, 2004, from 11 a.m. to 3 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes; would like to submit written or brief oral comments (5 minutes or less); or wants further information concerning this meeting, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Summary: The CASAC, which comprises seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC PM Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The teleconference is a continuation of the PM Review Panel's peer review of the *EPA Air Quality Criteria for Particulate Matter (Fourth External Review Draft*). Specifically, this meeting will be held to discuss the revisions to Chapter 9 (Integrative Synthesis) of the Fourth External Review Draft of the Air Quality Criteria Document (AQCD) for PM. The report from the CASAC PM Review Panel's last meeting to review this draft document, held on July 20–21, 2004, will soon be posted on the SAB Web site at: *http://www.epa.gov/sab.*

Background: EPA is in the process of updating, and revising where appropriate, the AQCD for PM as issued in 1996. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, where appropriate, of the air quality criteria and the National Ambient Air Quality Standards (NAAQS) for ''criteria'' air pollutants such as PM. On June 30, 2003, the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development, made available for public review and comment a Fourth External Review Draft of a revised document, *EPA Air Quality Criteria for Particulate Matter.* Under CAA sections 108 and 109, the purpose of the revised document is to provide an assessment of the latest scientific information on the effects of airborne PM on the public health and welfare, for use in EPA's current review of the NAAQS for PM. Detailed summary information on the history of the current draft AQCD for PM is contained in a previous **Federal Register** notice (68 FR 36985, June 20, 2003). The *EPA Air Quality Criteria for Particulate Matter (Fourth External Review Draft*), and the revised chapters of this draft document, can be viewed and downloaded from the NCEA Web site at: *http://cfpub.epa.gov/ncea/cfm/partmatt.cfm.* Any questions concerning the draft document should be directed to Dr. Robert Elias, NCEA–RTP, via telephone: (919) 541–1818; or e-mail at: *elias.robert@epa.gov.*

Availability of Additional Meeting Materials: A copy of the agenda for this teleconference meeting will be posted on the SAB Web site at: *http://www.epa.gov/sab* (under the ''Agendas'' subheading) in advance of the CASAC PM Review Panel teleconference. Other materials that may be available will also be posted on the SAB Web site during this time-frame.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the SAB Staff Office to accept written public comments of any length and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a meeting or teleconference will be limited to a total time of five minutes (unless otherwise indicated). Requests to provide oral comments must be *in writing* (preferably via e-mail) and received by Mr. Butterfield no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. *Written Comments:* The SAB Staff Office accepts written comments until the date of the meeting or teleconference (unless otherwise stated). Copies of both oral and written public comments should be provided to Mr. Butterfield (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format)). All comments should be received in the SAB Staff Office no later than noon Eastern Time five business days prior to the meeting or teleconference so that these comments may be made available to the CASAC PM Review Panel for their consideration.

Dated: August 13, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–19438 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIROMENTAL PROTECTION AGENCY

[OPP–2004–0245; FRL–7372–4]

Quizalofop-Ethyl; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0245, must be received on or before September 24, 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: James A. 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 an agricultural producer, food manufacturer, or pesticide manufacturer Potentially affected entities may include, but are not limited to:

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0245. 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, 1801 S. Bell St., 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–2004–0245. 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–2004–0245. 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–2004–0245.

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, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0245. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 16, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by E.I. du Pont de Nemours and Company 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.

E.I. du Pont de Nemours and Company

PP 3F4268

EPA has received additional residue studies required by the Agency in support of a pesticide petition PP 3F4268 from E. I. du Pont de Nemours and Company, DuPont Crop Protection,

Laurel Run, Wilmington, DE 19880–0038 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.441(a)(1) by establishing tolerances for residues of quizalofop (2-[4-(6-chloroquinoxalin-2yl)oxy)phenoxy])-propanoic acid], and quizalofop ethyl [ethyl-2-[4-(6-chloroquinoaxalin-2yl)oxy)phenoxy)propanoate), all expressed as quizalofop ethyl (DUPONT ASSURE II) in or on the raw agricultural commodities, dry beans at 0.4 parts per million (ppm), dry bean straw at 3.0 ppm, succulent beans at 0.25 ppm, succulent bean forage at 3.0 ppm, dry peas at 0.25 ppm, dry pea straw at 3.0 ppm, succulent peas at 0.3 ppm, succulent pea forage at 3.0 ppm, sugar beet root at 0.1 ppm, sugar beet top at 0.5 ppm; and paragraph (a) (3) by establishing a permanent tolerance for quizalofop p-ethyl for sugar beet molasses at 0.2 ppm. These proposed permanent tolerances will replace the time-limited tolerances listed in paragraph (a) (4). This summary was prepared by the petitioner. EPA has determined that the 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 the petition. Additional data may be needed before EPA rules in the petition. The additional residue studies were required by the Agency upon issuance of the time-limited tolerances, which published in the **Federal Register** of June 14, 1996 (61 FR 30171) (FRL–5375–6).

A. Residue Chemistry

1. *Plant metabolism.* The registrant has provided plant metabolism studies for cotton, potatoes, soybeans, sugar beets, and tomatoes. These studies have been previously reviewed in PP 3F4268. In summary, quizalofop-p ethyl ester is metabolized by cleavage at three sites as follows:

i. Primary pathway is hydrolysis of the ethyl ester to form the quizalofop-p acid.

ii. Cleavage of the enol ether linkage in the acid, between the phenyl and quinoxalinyl rings, to form phenols.

iii. Cleavage of the ether linkage between the isopropanic group and the phenyl ring to form a phenol.

The plant metabolism data show that quizalofop-p ethyl ester does not translocate, but is rapidly hydrolyzed to the corresponding acid; then the phenols conjugate with the plant sugars. Metabolism studies in soybeans using the racemic mixture quizalofop ethyl ester and the resolved D+ isomer show nearly identical pathways.

The nature of the quizalofop-p ethyl ester residue in cottonseed, potatoes, tomatoes, soybeans, and sugar beets is adequately understood. The residues of concern are quizalofop-p ethyl ester and its acid metabolite, quizalofop-p, and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p ethyl ester.

2. *Analytical method.* An adequate analytical methodology (high-pressure liquid chromatography using either ultraviolet or fluorescence detection) is available for enforcement purposes in Vol. II of the Food and Drug Administration Pesticide Analytical Method (PAM II, Method I). There are currently no actions pending against the registration of this chemical. Any secondary residues expected to occur in eggs; meat, fat, and meat byproducts of cattle, goats, hogs, horses, sheep, and poultry; and milk from this use will be covered by existing tolerances.

Adequately validated residue analytical method, DuPont 2829 (Xenos Method XAM-38A, Determination of Quizalofop-P-Ethyl and its Metabolites in Canola, Flax, Lentils, Peas, Dry and Succulent Beans and Sugar Beet Tops and Roots, by Liquid Chromatography). This method determines residues of quizalofop-P-ethyl and its metabolites in oilseed and other crops. It measures levels of quizalofop-P-ethyl, quizalofop-P acid and conjugates as total residues in the form of 2methoxy-6-chloroquinoxaline (MeCHQ). Quantitation was carried out using normal phase high pressure liquid chromatography with fluorescence detection. The residues were expressed as equivalents of quizalofop-P-ethyl.

A successful tolerance method validation (TMV) on DuPont 2829 (Xenos Method XAM-38A) is not a prerequisite for a tolerance on beans (succulent and dried) as well as sugar beets and sugar beet molasses as there is already an enforcement method in PAM II.

3. *Magnitude of residues*—a. *Magnitude of the residue in plants.* The studies submitted include field trials in three regions for succulent beans, six additional sites for dry beans in four regions, and five additional sites in three regions for sugar beets.

In conjunction with previously submitted data an adequate amount of geographically representative crop field trial residue data were presented which show that the proposed tolerances should not be exceeded when quizalofop ethyl is formulated into DUPONT ASSURE II and used as directed.

b. *Magnitude of the residue in animals.* A ruminant feeding study has been submitted and reviewed in PP 5F3252 and PP 1F3951. In summary, three groups of three lactating dairy cows plus a control group were fed 0.1, 0.5, and 5.0 ppm quizalofop ethyl ester (encapsulated) for 28-consecutive days. Milk was collected daily and a sub-sample was divided into skim milk and cream. Two cows were sacrificed after 28 days with samples of fat, skeletal muscle, liver, and kidney being collected and analyzed. The remaining cow in each test group was fed a regular diet without encapsulated quizalofop ethyl ester for an additional 7 days before sacrifice. Whole milk, skim milk, and cream from the control, and the 0.1 and 0.5 ppm dose groups showed no quizalofop to <0.02 ppm (0.05 ppm in cream). From the 5 ppm dose, quizalofop residues ranged from 0.01 to 0.02 ppm in whole, and when these samples were separated into cream and skim milk, the quizalofop partitioned into the cream with residues plateauing at 0.26 to 0.31 ppm. No quizalofop to <0.02 ppm was detected in skeletal muscle, and to <0.05 ppm was detected in any liver or fat sample from any of the three doses. Quizalofop was detected in one kidney sample as 0.05 ppm from the 5 ppm dose.

From the feed items in this petition, all of the feed items in cattle diets can be treated with quizalofop ethyl ester. A theoretical beef cattle diet consisting of bean and pea forage, canola meal, pea hay, and sugar beet tops which none-the-less maximizes the potential quizalofop exposure of 2.1 ppm. A theoretical dairy cattle diet consisting of pea and bean forage would none-the-less maximize the potential quizalofop exposure at 2.4 ppm. Substitutions of other feed items and varying their percentages in the diets would give a lower-dietary quizalofop burden.

The results of the quizalofop ethyl ester bovine feeding study show that finite residues will actually occur in milk and tissues from the feeding of quizalofop ethyl ester treated raw agricultural commodities (RACs) or their processed feed items when DUPONT ASSURE II is used as directed. The established quizalofop and quizalofop ethyl ester tolerance in milk, and in fat, meat, and meat by-products of cattle, goats, hogs, horse, and sheep are adequate and need not be increased from these additional uses.

A poultry feeding study has been submitted and reviewed (ibid). In summary, three groups of 20 hens (plus one control group) were dosed with

encapsulated quizalofop ethyl ester at 0.1, 0.5, and 5 ppm daily for 28-consecutive days. Eggs were collected daily, and after 28 days ¾ of the hens in each test group were sacrificed, and samples of fat, liver, kidney, breast and thigh muscles were collected and analyzed. Tissues from each test group were pooled prior to analysis. The remaining five hens were fed a regular poultry diet without quizalofop ethyl ester for an additional 7 days before sacrifice. No quizalofop residues were detected in the liver to <0.05 ppm, and in breast and thigh muscles to <0.02 ppm for any dose administered. From the 5 ppm dose, one kidney sample showed 0.09 ppm quizalofop, two fat samples were 0.05 and 0.06 ppm quizalofop, and one egg sample was 0.02 ppm quizalofop.

The results of the quizalofop ethyl ester poultry feeding study show that while it is not possible to establish with certainty whether finite residues will actually occur in eggs and tissues from the feeding of quizalofop ethyl ester treated RACS or their processed feed items when DUPONT ASSURE II is used as directed, there is a reasonable expectation for such residues to occur. The established tolerance of quizalofop and quizalofop ethyl ester in eggs, and in fat, meat, and meat by-products of poultry are adequate and need not be changed from these additional uses.

B. Toxicological Profile

1. *Acute toxicity.* Several acute toxicology studies were conducted and the overall results placed technical grade quizalofop ethyl in toxicity Category III. These include the following studies in Category III: acute oral toxicity (LD_{50s} 1,480 and 1,670 for female and male rats, respectively)and eye irritation (mild effects; reversible within 4 days). Dermal toxicity (LD_{50} > 5,000 milligram/kilogram (mg/kg); rabbit), inhalation toxicity LC_{50} >5.8 (mg/Liter (L)); rat) and dermal irritation were classified within Category IV. Technical quizalofop ethyl was not a dermal sensitizer.

2. *Genotoxicty.* Technical quizalofop ethyl was negative in the following genotoxicity tests: Bacterial gene mutation assays with *E. coli* and *S. typhimurium*; gene mutation assays in Chinese hamster ovary (CHO) cells; *in vitro* DNA damage assays with *B. subtillis* and in rat hepatocytes; and an *in vitro* chromosomal aberration test in CHO cells.

3. *Reproductive and developmental toxicity.* Studies supporting the registration include: A developmental toxicity study in rats administered dosage levels of 0, 30, 100, and 300 mg/kg/day on days 6 to 15 of gestation. The maternal toxicity no observed effect level (NOEL) was 30 mg/kg/day and a developmental toxicity NOEL was greater than 300 mg/kg/day. The maternal NOEL was based on reduced food consumption and increased liver weights at 100 and 300 mg/kg/day and reduced maternal weight gain at 300 mg/kg/day. There was an equivocal effect on maternal weight gain in the 100 mg/kg/day group (body weight in this group was lower before the outset of dosing, so unclear if subsequent effects were compound related).

A developmental toxicity study in rabbits administered dosage levels of 0, 7, 20, and 60 mg/kg/day on days 7–19 of gestation with no developmental effects noted at 60 mg/kg/day. The maternal toxicity NOEL was 20 mg/kg/day based on decreases in food consumption at 60/mg/kg/day.

A 2-generation reproduction study in rats fed diets containing 0, 25, 100, or 400 ppm (or approximately 1, 1.25, 5, and 20 mg/kg/day, respectively) with a developmental (systemic effects) NOEL of 1.25 mg/kg/day for F2B weanlings based on increased liver weights and increased incidence of eosinophilic changes in the livers at 5.0 mg/kg/day. These liver changes were considered to be physiological or adaptive changes to compound exposure among weanlings. When access to the mother's feed is available, it is a common observation that young rats will begin consuming chow prior to complete weaning at 21 days of age. Consumption could not be quantified; therefore, the maternal consumption was assumed as the NOEL (if normalized on a body weight basis, exposures to the weanling rats were likely higher). The parental NOEL of 5.0 mg/kg/day was based on decreased body weight and premating weight gain in males at 20 mg/kg/day, highest dose level (HDT).

4. *Subchronic toxicity.* A 90–day study was conducted in rats fed diets containing 0, 40, 128, and 1,280 ppm (or approximately 0, 2, 6.4, and 64 mg/kg/day, respectively). The NOEL was 2 mg/kg/day. This was based on increased liver weights at 6.4 mg/kg.

A 90–day feeding study in mice was conducted with diets that contained 0, 100, 316, or 1,000 ppm (or approximately 0, 15, 47.4, and 150 mg/kg/day, respectively). The NOEL was <15 mg/kg/day, lowest dose level (LDT) based on increased liver weights and reversible histopathological effects in the liver at the LDT.

A 6–month feeding study in dogs was conducted with diets that contained 0, 25, 100, or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOEL was 2.5 mg/kg/day based on increased blood urea nitrogen at 10 mg/kg/day.

A 21–day dermal study was conducted in rabbits at doses of 0, 125, 500, or 2,000 mg/kg/day. The NOEL was 2,000 mg/kg/day HDT.

5. *Chronic toxicity.* An 18–month carcinogenicity study was conducted in CD–1 mice fed diets containing 0, 2, 10, 80 or 320 ppm (or approximately 0, 0.3, 1.5, 12, and 48 mg/kg/day, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 12 mg/kg/day. A marginal increase in the incidence of hepatocellular tumors was observed at 48 mg/kg/day HDT, which exceeded the maximum tolerated dose (MTD). (Please see the discussion by the EPA HED Carcinogenicity Peer Review Committee.)

A 2–year chronic toxicity/carcinogenicity study was conducted in rats fed diets containing 0, 25, 100, or 400 ppm (or 0, 0.9, 3.7, and 15.5 mg/kg/day for males and 0, 1.1, 4.6, and 18.6 mg/kg/day for females, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 18.6 gram (g)/kg/day HDT. The systemic NOEL was 0.9 mg/kg/day based on altered red cell parameters and slight/minimal centrilobuler enlargement of the liver at 3.7 mg/kg/day.

A 1–year feeding study was conducted in dogs fed diets containing 0, 25, 100, or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOEL was 10 mg/kg/day HDT. EPA has classified quizalofop ethyl as carcinogenicity Category D (not classifiable as to human cancer potential).

6. *Animal metabolism.* The metabolism of quizalofop ethyl in animals (goat, poultry, and rat) is well understood. 14_C-phenyl and 14_C-quinoxaline quizalofop ethyl ester metabolism studies have been conducted in each species. There are similarities among these species with respect to metabolism. Quizalofop ethyl is rapidly and extensively metabolized and rapidly excreted by rats. The principal metabolites were the quizalofop-p acid and two dechlorinated hydroxylated forms of the acid. Tissue residues were minimal and there was no evidence of accumulation of quizalofop ethyl or its metabolites in the rat.

The primary pathway in ruminants is hydrolysis of the ethyl ester to form the quizalofop-p methyl ester. In poultry, the primary metabolic pathway is also the hydrolysis of the ethyl ester to form the quizalofop-p acid, then the methyl

esterification to form the quizalofop methyl ester becomes a minor pathway.

The nature of the quizalofop ethyl ester residue in livestock is adequately understood. The residues of concern are quizalofop ethyl, quizalofop methyl, and quizalofop, all expressed as quizalofop ethyl.

7. *Metabolite toxicology.* There is no evidence that the metabolites of quizalofop ethyl as identified as either the plant or animal metabolism studies are of any toxicological significance.

8. *Endocrine disruption* No special studies investigating potential estrogenic or other endocrine effects of quizalofop p-ethyl have been conducted. However, the standard battery of required toxicology studies has been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that quizalofop p-ethyl has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* An analysis of chronic dietary risk was conducted to determine the total exposure from current and proposed final tolerances for quizalofop-P-ethyl. A chronic reference dose (CRfD) of 0.009 mg/kg/day was used in the analyses based on a NOEL of 0.9 mg/kg/day from the chronic rat dietary study and a 100x uncertainty factor. Using very conservative criteria, an acute reference dose (ARfD) of 0.3 mg/kg/day based on a maternal NOEL of 30 mg/kg/day (and a 100x uncertainty factor) from rat developmental toxicity study in which an effect on maternal body weight may have occurred at the outset of dosing. Although, there was a NOEL of 20 mg/kg/day in a rabbit developmental toxicity study, this was based only on lower overall food consumption in the absence of body weight effects during dosing and may not represent acute toxicity since all groups including vehicle-dosed controls had lower food consumption at the outset of dosing.

i. *Food.* The chronic dietary exposure assessment was conducted using the Dietary Exposure Evaluation Model (DEEM™) Version 7.76 based on the current published tolerances and the proposed tolerances. The estimated exposure was 0.000343 mg/kg body weight/day for the U.S. population (total) and 0.000892 mg/kg body weight/day for the population subgroup with the highest estimated exposure (children age 1–6 years). For the U.S. population subgroup this exposure represents approximately 3.8% of the CRfD while for the population with the highest estimated exposure, this represents approximately 9.9% of the CRfD. Based on the risk estimates arrived at in this analysis, chronic dietary risk from the current and proposed uses of DUPONT ASSURE II is minimal.

The acute dietary exposure assessment was conducted using the DEEM™ Version 7.76 based on the current published tolerances and the proposed tolerances. The estimated exposure was 0.004189 mg/kg body weight/day (99.9th percentile) for the U.S. population (total) and 0.006847 mg/kg body weight/day (99.9thpercentile) for the population subgroup with the highest estimated exposure (non-nursing infants <1 year old). For the U.S. population subgroup this exposure represents approximately 1.4% of the ARfD while for the population with the highest estimated exposure, this represents approximately 2.28% of the ARfD. Based on the risk estimates arrived at in this analysis, acute dietary risk from the current and proposed uses of DUPONT ASSURE II is minimal.

ii. *Drinking water.* Acute and chronic surface water exposures were estimated using the FQPA Index Reservoir Screening Tool (FIRST) and the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) models. Ground water exposures were estimated using Screening Concentration in Ground Water (SCI-GROW).

The EPA uses drinking water levels of comparisons (DWLOCs) as a surrogate measure to capture risk associated with exposure to pesticides in drinking water. A DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. Since there are no residential uses for quizalofop ethyl, the aggregate exposure is due to food and water only. A DWLOC will vary depending on the residue level in foods, the toxicity endpoint, and with drinking water consumption patterns and body weights for specific subpopulations.

The acute and chronic DWLOC concentrations are likely to be many orders of magnitude higher than those estimated by the models listed in this unit. Therefore, one can conclude with reasonable certainty that residues of quizalofop ethyl in drinking water do not contribute significantly to the aggregate acute or chronic human health risk.

2. *Non-dietary exposure.* Quizalofop ethyl is not registered for any use that could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

There is no evidence to indicate or suggest that quizalofop p-ethyl has any toxic effects on mammals that would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described in Unit C.1. and based on the most sensitive species chronic NOEL of 0.9 mg/kg and a CRfD of 0.009 mg/kg/day, the existing tolerances and proposed uses of quizalofop ethyl on beans, peas, and sugar beet are estimated to utilize 3.8% of the CRfD for the general U.S. population. Using the conservative exposure assumptions described in Unit C.1. and based on the most sensitive species acute NOEL of 30 mg/kg and a ARfD of 0.3 mg/kg/day, the existing tolerances and proposed use of quizalofop ethyl on beans, peas, and sugar beet are estimated to utilize 1.4% of the ARfD for the general U.S. population.

These results fall below HED's level of concern (>100% RfD) and indicate that there is reasonable certainty that no chronic or acute effects would result from exposure to quizalofop p-ethyl with the recommended agricultural uses.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of quizalofop ethyl, data were considered from developmental toxicity studies in the rat and rabbit, and a multi-generation reproduction study in rats. There were no developmental effects observed in the absence of maternal toxicity in the rat and rabbit developmental studies. Minimal adaptive or physiological effects were observed in livers of weanlings in the 2-generation rat reproduction study described in Unit B.3. However, this effect was only observed at a dose that far exceeds any expected human exposure. Further, the NOEL of 0.9 mg/kg/day from the 2–year rat study with quizalofop ethyl which was used to calculate the RfD (discussed in Unit C.1.), is already lower than any of the NOELs defined in the developmental and reproductive toxicity studies with quizalofop ethyl.

As indicated in Unit C.1.i., infants and children have a low potential for quizalofop ethyl exposure. The toxicology profile of quizalofop ethyl

demonstrates low mammalian toxicity. Because there was no evidence that offspring were uniquely susceptible to the toxic effects of quizalofop ethyl, an additional 10–fold uncertainty factor should not be required to protect infants and children. Therefore, the RfD of 0.009 mg/kg/day, which utilizes a 100–fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children from aggregate exposure to quizalofop ethyl.

F. International Tolerances

Since there are no Mexican or Codex MRLs tolerances, compatibility is not a problem at this time. Compatibility cannot be achieved with the Canadian negligible residue type limit at 0.1 ppm at the United States use pattern, which had findings of real residues above 0.1 ppm.

[FR Doc. 04–19441 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0162; FRL–7370–9]

Napropamide; Notice of Receipt of Requests to Voluntarily Cancel a Certain Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by United Phosphorous, Inc., to voluntarily cancel one pesticide registration.

DATES: Unless a request is withdrawn by September 24, 2004 for EPA Registration Number: 70506–30, orders will be issued canceling this registration. The Agency will consider withdrawal requests postmarked no later than September 24, 2004.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; e-mail address: *fuller.demson@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–2004–0162. 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, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of an application from the registrant to cancel 70506–30, a pesticide product registered under section 3 of FIFRA. This registration is listed by registration number in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
70506–30	DEVRINOL 10-G Ornamental	Napropamide

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrants have requested that EPA waive the 180–day comment period. EPA is granting the registrants' request to waive the 180–day comment period. Therefore, EPA will provide a 30–day comment period on the proposed requests. EPA anticipates granting the cancellation request shortly after the end of the 30–day comment period for this notice. The registration for which a cancellation was requested is identified (above) in Table 1.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued canceling all of this registration. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 30–day period.

Table 2 of this unit includes the name and address of record for the registrant of the product in Table 1 of this unit, by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
70506	United Phosphorus, Inc. 423 Riverview Plaza Trenton, NJ 08611

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before September 24, 2004. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. For purposes of the cancellation order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions of the forthcoming cancellation order will be as follows:

i. *Distribution or sale*. It is unlawful for any person to distribute or sell existing stocks of any product identified in Table 1.

ii. The registrant identified in Table 2 may sell and distribute existing stocks of their own products until 1 year from the effective date of the cancellation order.

iii. Any person may ship such existing stocks for the purpose of export consistent with FIFRA section 17 or for proper disposal in accordance with applicable law.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 4, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–19031 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0205; FRL–7367–3]

Pesticides; Implementation of Globally Harmonized System; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is issuing for comment a White Paper entitled, *The Globally Harmonized System of Classification and Labelling of Chemicals: Implementation Planning Issues for the Office of Pesticide Programs.* This document describes the background and context of the international Globally Harmonized System (GHS) for chemical hazard classification and labeling. Further, the document describes EPA's proposed approach to implementing this system for pesticide products that are registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The Agency is also making available a side-by-side comparison document summarizing current hazard classification and labeling policies and the corresponding elements of the GHS.

When implemented, the GHS will increase international consistency in hazard classification and labeling for pesticide and other chemical products. EPA believes that such consistency will promote greater clarity and understanding of the hazards of pesticide products, thereby reducing potential hazardous exposures and adverse effects from use, without reducing benefits to users or imposing burdens on the pesticide industry.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0205, must be received on or before October 25, 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: Mary Frances Lowe, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5689; fax number: (703) 308–1850; e-mail address: *lowe.maryfrances@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who register pesticide products in the United States. Regulated categories and entities may include, but are not limited to:

- Pesticide producers (NAICS 32532)
- Producers of antimicrobial pesticides (NAICS 32561)
- Producers of antifoulant pesticides (NAICS 32551)
- Producers of wood preservatives (NAICS 32519)

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–2004–0205. 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, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0205. 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–2004–0205. 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–2004–0205.

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, 1801 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0205. 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**.

II. Background

A. The Globally Harmonized System of Classification and Labelling of Chemicals (GHS)

The GHS is a major international activity mandated by the 1992 UN Conference on Environment and Development and endorsed by the 2002 World Summit on Sustainable Development (WSSD) and the Intergovernmental Forum on Chemical Safety (IFCS). The United States and other countries and stakeholders worked for over a decade to develop the GHS, which is designed to provide a common approach to defining and classifying hazards and communicating hazard information on labels and safety data sheets. The anticipated benefits of harmonization include, for example:

- Enhanced protection of human health and the environment: GHS will help promote greater consistency in the classification and hazard labeling of all chemicals, thereby enhancing safer handling and use of chemicals in transport, in the workplace, and in consumer use settings.
- Sound management of chemicals worldwide: GHS will provide a harmonized basis for the first step in sound management of chemicals, identifying/classifying hazards and communicating them.
- Trade facilitation: GHS will reduce costly and time-consuming activities needed to comply with multiple international classification and labeling systems, promoting more consistency in regulation, and reducing non-tariff barriers to trade.

The GHS was formally adopted by the United Nations Economic and Social Council (UN ECOSOC) in July 2003. For a fuller discussion of the history and organization of the GHS negotiations, see the **Federal Register** of April 3, 1997 (62 FR 15951).

B. Hazard Criteria and Labeling Under FIFRA

Pesticide products are regulated in the United States under FIFRA. Under FIFRA, each product intended to be distributed or sold domestically, including imported products, must be registered with EPA. To register a product, EPA reviews data and information concerning the pesticide to determine whether it meets the standard of FIFRA section 3(c)(5), including that the product will not cause ''unreasonable adverse effects'' on man or the environment. As part of its evaluation, EPA reviews and approves the label of each product.

EPA regulations on pesticide labeling, located in 40 CFR part 156, prescribe a number of elements that will be affected by the GHS when adopted. EPA requires pesticide labeling to bear, among other things:

1. Identifying information, such as a product name, registrant name and address, and EPA registration number. These identification elements are currently consistent with the GHS, and would not be affected in adopting the GHS. EPA also strongly encourages, but does not require, a telephone contact number on pesticide labels to assist persons who seek additional information. GHS specifies that a telephone number should be included on the label as part of supplier identifier information.

2. An ingredients statement that identifies each pesticide active ingredient and its percentage, as well as the percentage (but not the identity) of inert ingredients in the product. The GHS encourages the identification of all ingredients that contribute to the hazard of the product, but permits national policies concerning disclosure of CBI to take precedence.

3. Appropriate hazard and precautionary statements in the areas of physical hazard, acute toxicity hazards, and certain toxicity statements pertaining to ecological hazards. EPA currently classifies each pesticide product for acute toxicity (oral, dermal, and inhalation) and for skin and eye corrosion/irritation using a four-category scheme that is set out in its regulations. EPA also requires classification and labeling for skin sensitization, flammability, and certain environmental hazards. Once a product has been assigned to a hazard category, EPA prescribes appropriate label hazard statements in its registration decisions.

The GHS will change the hazard classification criteria, (for example, by using a five-category scheme for acute oral, dermal, and inhalation toxicity), and, based upon the new classifications, sets out standardized hazard statements, signal words, and pictograms by hazard class and category.

4. Use directions, that, if followed, will be adequate to protect against unreasonable adverse effects. The GHS does not address use directions, and EPA would anticipate no changes in current practice.

To adopt the GHS for U. S. pesticide products, EPA must revise its labeling regulations to make them consistent with the GHS hazard criteria and hazard statements. In addition, EPA must devise and implement a process for revising and reviewing the labeling of all currently registered pesticide products that are affected by the GHS. Moreover, EPA will be evaluating its other pesticide regulations that depend on a toxicity categorization scheme to determine whether changes are necessary.

III. Documents Made Available

The White Paper that EPA is making available describes the development of the GHS internationally, the background and context of pesticide regulation in the United States, the changes that adoption of the GHS would require, and the Agency's initial thinking on how it will implement the GHS.

To assist commenters in understanding the revisions that will be proposed, EPA is also making available a document entitled *Chemical Hazard Classification and Labeling: Comparison of OPP Requirements and the GHS.* This document generally compares the specific elements of U.S. pesticide hazard criteria and labeling as currently required with the corresponding GHS elements. The document includes a series of tables providing a side-by-side comparison of the two systems.

List of Subjects

Environmental protection, labeling, occupational safety and health, pesticides and pests, reporting and recordkeeping requirements.

Dated: August 12, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–19233 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP– 2004–0158; FRL–7360–7]

Final Product Performance Test Guideline; Methods for Efficacy Testing of Termite Baits; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These test guidelines represent an Agency effort that began in 1991 to harmonize the test guidelines within OPPTS, as well as to harmonize the OPPTS test guidelines with those of the Organization for Economic Cooperation and Development (OECD). The process for developing and amending these test guidelines includes public participation and the extensive involvement of the scientific community, including peer review by the Scientific Advisory Panel (SAP) and the Scientific Advisory Board (SAB) and other expert scientific organizations. With this notice, EPA is announcing the availability of the final test guideline for Series 810–Product Performance Test Guidelines, OPPTS 810.3800 Methods for Efficacy Testing of Termite Baits.

FOR FURTHER INFORMATION CONTACT:

FIFRA information contact: Communications Services Branch (7506C), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5017; fax number: (703) 305–5558.

For technical information contact: Kevin Sweeney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5063; e-mail address: *sweeney.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under TSCA, FFDCA, or FIFRA, 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**.

II. How Can I Get Copies of This Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0158. 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.

B. 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/*.You may also obtain copies of test guidelines from the EPA Internet Home Page 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 II.A. Once in the system, select ''search,'' then key in the appropriate docket ID number.

III. What Action Is EPA Taking?

EPA is announcing the availability of the final test guideline for Series 810–Product Performance Test Guidelines, OPPTS 810.3800 Methods for Efficacy Testing of Termite Baits. This guideline addresses test methods and evaluation criteria for pesticide products used as termite baits to kill termites. Key elements in the final test guideline are as follows:

1. This final test guideline describes specific methods for conducting product performance testing of termite baits which reflect the Agency's considered recommendations for the minimum steps necessary to develop reliable data on termite bait product performance.

2. Three tests are described to generate the data set that EPA considers reliable for evaluation of termite bait efficacy. Testing termite baits in the laboratory, experimental field plots, and at least 100 termite infested structures in the United States is recommended. Termite bait control success is evaluated based on review of data from all three testing methods.

IV. How Were These Test Guidelines Developed?

The draft test guideline was reviewed by EPA's FIFRA SAP in a public meeting on July 30–31, 2002, which was announced in the **Federal Register** on July 5, 2002 (67 FR 44836) (FRL–7186–6) and has been revised in response to the SAP and the public comments.

V. Are There Any Applicable Voluntary Consensus Standards That EPA Should Consider?

This notice of availability does not involve a proposed regulatory action that would require the Agency to consider 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). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide an explanation to Congress, through Office of Management and Budget (OMB), when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

In the July 5, 2002, **Federal Register** document announcing EPA's FIFRA SAP meeting held on July 30–31, 2002, EPA specifically sought comment on the availability of any applicable voluntary consensus standards that should be considered during the development of the final test guideline or any future regulatory action that EPA may take under TSCA. The Agency did not receive any comments on the availability of any applicable voluntary consensus standards.

List of Subjects

Environmental protection, Chemical testing, Test guideline, Termites, Termite Baits.

Dated: August 12, 2004

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–19442 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7806–3]

Notice of Proposed Administrative Cost Recovery Agreement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, Regarding the Olean Steel Sales and Service, Inc. Superfund Site, Town of Olean, Cattaraugus County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative agreement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA'') Region II announces a proposed administrative settlement pursuant to section 122(h)(1) of CERCLA, relating to the Olean Steel Sales and Service, Inc. Superfund Site (the ''Site'') in the Town of Olean, Cattaraugus County, New York. This Site is not on the National Priorities List established pursuant to section 105(a) of CERCLA. This notice is being published to inform the public of the proposed settlement and of the opportunity to comment.

The settlement, memorialized in an Administrative Cost Recovery Agreement (''Agreement''), is being entered into by EPA and Olean Steel Sales and Service, Inc. (the ''Settling Party''). Under the Agreement, which is based on the ability to pay of the Settling Party, the Settling Party shall pay EPA the sum of $78,500 in settlement of EPA's claim for past response costs incurred with respect to the Site.

DATES: EPA will accept written comments relating to the proposed settlement for a period of thirty days from the date of publication of this notice.

ADDRESSES: Comments should be sent to: Cynthia Psoras, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866. Comments should reference the Olean Steel Sales and Service, Inc., Superfund Site and EPA Index No. CERCLA–02–2004–2026. For a copy of the Agreement, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Cynthia Psoras, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York, 10007–1866, Telephone: (212) 637–3169.

Dated: August 11, 2004.

George Pavlou,

Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II.

[FR Doc. 04–19436 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7806–4]

Proposed Administrative Order on Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986; In Re: Wells G & H Superfund Site Located in Woburn, MA

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed Administrative Order on Consent; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.,* notice is hereby given of a proposed Administrative Order on Consent under section 122(h) of CERCLA, 42 U.S.C. 9622(h), between the United States, on behalf of the U.S. Environmental Protection Agency (''EPA'') and the Olympia Nominee Trust (''Olympia''). The proposed settlement provides a covenant not to sue for approximately one-half of the past response costs including interest incurred by EPA related to the Olympia property ($1,096,741.27) which is part of the Wells G & H Superfund Site. In exchange for this covenant, Olympia has agreed to complete a removal action on its property that EPA has estimated will cost approximately $2,362,572. Given the assets of the Olympia Nominee Trust, this represents a fair and reasonable compromise of EPA's past response cost claim.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214.

DATES: Comments must be submitted within 30 (thirty) days of publication of this notice.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mail code RAA, Boston, Massachusetts 02203, and should refer to: In re: Wells G & H Superfund Site, U.S. EPA Docket No. CERCLA–01–2004–0059.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed Administrative Order on Consent can be obtained from M. Gretchen Muench, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region I, One Congress Street, Mail code SES, Boston, Massachusetts 02214, (617) 918–1896.

Dated: August 6, 2004.

Rich Cavagnero,

Acting Director, OSRR Region I.

[FR Doc. 04–19439 Filed 8–24–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of New Exposure Draft Recognition of the Transfer of Funds Between Interior's Reclamation Fund and Energy's Western Area Power Administration: In Accordance With SFFAS 1 Accounting for Selected Assets and Liabilities and SFFAS 5 Accounting for Liabilities of the Federal Government

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, section 10(a)(2), and the FASAB Rule Of Procedure, as amended in October, 1999, notice is hereby given that the Accounting and Auditing Policy Committee has issued an exposure draft of a new Federal Financial Accounting and Auditing Technical Release entitled, *Recognition of the Transfer of Funds Between Interior's Reclamation Fund and Energy's Western Area Power Administration: In Accordance with SFFAS 1 Accounting for Selected Assets and Liabilities and SFFAS 5 Accounting for Liabilities of the Federal Government.*

A summary of the proposed Statements follows: The purpose of this proposed technical release is to provide technical guidance to the Department of Energy (Energy) and the Department of the Interior (Interior) on a difference in their interpretation of the effect of legislation on their application of accounting standards to certain transactions between them.

Respondents are encouraged to comment on any part of the exposure drafts. Written comments are requested by September 20, 2004, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Washington, DC 20548.

Copies of the Exposure Drafts can be obtained by contacting FASAB at 202–512–7350 or *valentinem@fasab.gov.* Additionally, the Exposure Drafts will be available on FASAB's home page *http://www.fasab.gov/.*

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: August 20, 2004.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 04–19503 Filed 8–24–04; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 17, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 24, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1007.

Title: Streamlining and Other Revisions of part 25 of the Commission's Rules.

Form No: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 28.

Estimated Time per Response: .25–2 hours.

Frequency of Response: On occasion, annual and other reporting requirements.

Total Annual Burden: 9,688 hours.

Total Annual Cost: $95,194,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: On April 16, 2004, the FCC released a Fourth Report and Order in IB Docket Nos. 02–34 and 00–248, FCC 04–92. In this rulemaking, the Commission extended the mandatory electronic filing requirement to all space station and earth station applications, related pleadings, and other filings governed by part 25. Direct Broadcast Satellite (DBS) and Digital Audio Radio Service (DARS) licensees can now use a streamlined procedure when relocating satellites for fleet management purposes. Currently, this procedure is only limited to Geostationary Satellite Orbit (GSO) licensees. Under this streamlined procedure, the DBS and DARS licensees may modify its license without prior authorization, but upon 30 day prior notice to the Commission and any potentially affected licensed spectrum user. This will enable the Commission to act on DBS fleet management modifications faster.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19466 Filed 8–24–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at (202) 523–5793 or via e-mail at *tradeanalysis@fmc.gov.* 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.: 011733–013.

Title: Common Ocean Carrier Platform Agreement.

Parties: A.P. Moller-Maersk A/S, P&O Nedlloyd Limited, Hamburg-Süd, Mediterranean Shipping Company S.A., CMA CGM S.A., Hapag Lloyd Container Linie GmbH, and United Arab Shipping

Company (SAG), as shareholder parties, and Alianca Navegacao e Logistica Ltda., Safmarine Container Lines N.V., Nippon Yusen Kaisha, CP Ship Limited, Tasman Orient Line C.V., Mitsui O.S.K. Lines Ltd., Lykes Lines Limited LLC, Kawasaki Kisen Kaisha Ltd., FESCO Ocean Management Ltd., and Senator Lines GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment adds Senator Lines GmbH as a non-shareholder party to the agreement.

By order of the Federal Maritime Commission.

Dated: August 20, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–19473 Filed 8–24–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
004428NF	A A Shipping LLC, 11100 Wilcrest, Unit #3, Houston, TX 77099	July 15, 2004.
010734NF	Alcar International, Inc., 5501 NW. 72nd Avenue, Miami FL 33166	July 7, 2004.
002964NF	Aries International, Inc., 365 Franklin Avenue, Franklin Square, NY 11010	July 13, 2004.
003706NF	Chesapeake Bay Shipping and, Warehousing, Inc., 3914 Vero Road, Baltimore, MD 21227	July 5, 2004.
017378NF	E.M.W. Freight Forwarding Corp., 8601 NW. 72nd Street, Miami, FL 33166	June 14, 2004.
004546F	Foreign Freight Systems Corp., 10250 NW. 89th Avenue, Bay 10, Miami, FL 33126	July 20, 2004.
016471NF	Universal Express International, 14930 S. Figueroa Street, Gardena, CA 90248	July 15, 2004.

Ronald D. Murphy,

Deputy Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–19470 Filed 8–24–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 017480N
Name: ANG Bilis Bilis Air Cargo, Inc.-U.S.A. dba Abacus Freight Forwarders
Address: 5350 Stohm Avenue, Suite 15, North Hollywood, CA 91601
Date Revoked: July 20, 2004.
Reason: Surrendered license voluntarily.

License Number: 016256N
Name: Exim Services, Inc.
Address: 13952 Bora Bora Way, F–314, Marina Del Rey, CA 90292
Date Revoked: July 28, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004182F
Name: Foreign Cargo International, Inc.
Address: 7200 NW 84th Avenue, Miami, FL 33166
Date Revoked: July 26, 2004.
Reason: Failed to maintain a valid bond.

License Number: 004137N
Name: H.W. Robinson & Co., Inc.
Address: One Cross Island Plaza, Suite 119, Rosedale, NY 11422
Date Revoked: August 6, 2004.
Reason: Surrendered license voluntarily.

License Number: 017782F
Name: Hayek Services, Inc.
Address: 5513 NW 72nd Avenue, Miami, FL 33166
Date Revoked: July 28, 2004.
Reason: Failed to maintain a valid bond.

License Number: 018516F
Name: K.E.I. Enterprises dba KEI Logix
Address: 249 E. Redondo Beach, Gardena, CA 90248
Date Revoked: August 4, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016707N
Name: KS Logix, Inc. dba U.N.I. International Co.
Address: 675 W. Victoria Street, Compton, CA 90220
Date Revoked: July 28, 2004.
Reason: Failed to maintain a valid bond.

License Number: 018343N
Name: Louisiana Forwarder LLC.
Address: 664 Eight Street, Slidell, LA 70458
Date Revoked: July 9, 2004.
Reason: Surrendered license voluntarily.

License Number: 001727F
Name: Lysan Forwarding Company, Inc.
Address: 5220 NW 72nd Avenue, Bay 34, Miami, FL 33166
Date Revoked: August 4, 2004.
Reason: Failed to maintain a valid bond.

License Number: 015682N
Name: S/J Americas Service, LLC dba Smith & Johnson
Address: 12707 Wood Forest Blvd., Houston, TX 77015
Date Revoked: August 7, 2004.
Reason: Failed to maintain a valid bond.

License Number: 016949N
Name: Supply Chain Services, LLC
Address: 847 West Avenue, Building 10, Rochester, NY 14611
Date Revoked: August 2, 2004.
Reason: Surrendered license voluntarily.

Ronald D. Murphy,

Deputy Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–19471 Filed 8–24–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Holiday Shipping, 5522 Old National Hwy, Ste. C–120, College Park, GA 30349, Marie S. Carew, Sole Proprietor.

Deans & Associates Freight System Inc., 225–10 Merrick Blvd., Laurelton, NY 11413. *Officers:* Troy A. Dean, President (Qualifying Individual), Yvonne Tucker, Vice President.

Shanghai City Union Logistics Network Co., Ltd., 1641 W. Main Street, #418, Alhambra, CA 91801. *Officer:* Willie Yong-Chuan Wu, President (Qualifying Individual).

Transcom Express, Inc., 80 Broad Street, Suite 11M, Red Bank, NJ 07701.*Officers:* Elizabeth M. Magistro, President (Qualifying Individual), Ajayveer Choktopat, Secretary.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Consolidated Logistics LLC, 7806 NW. 71th Street, Miami, FL 33166. *Officers:* Heriberto Sanchez, Jr., Operational Manager (Qualifying Individual), Allerson B. Sardinha, President.

FLS–USA Forwarding, Ltd., 15955 West Hardy, Suite 222, Houston, TX 77060. *Officer:* Paul M. Garcia, Manager (Qualifying Individual).

Ambrit-USA Inc., 2710 NW. 30th Avenue, Lauderdale Lakes, FL 33311. *Officer:* Malcolm Garrett, President (Qualifying Individual).

Concert Group Logistics, LLC, 2234 Wisconsin Avenue, Downers Grove, IL 60515. *Officers:* Gerald Post, Exec. Vice President (Qualifying Individual) Daniel Para, President.

Just Cargo, LLC dba Just Cargo Lines, 2799 NW. 82nd Avenue, Miami, FL 33122. *Officer:* Gustavo Alejandro Verite, President (Qualifying Individual).

Uniwide Cargomovers & Travel, Inc., 21800 Dolores Street, Carson, CA 90745. *Officers:* Efren T. Arriola, President (Qualifying Individual), Maximo T. Arriola, Treasurer.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

MK Shipping Inc., 4720 Griggs Road, Houston, TX 77021. *Officers:* Fakher Nawar, Office Manager (Qualifying Individual), Moustafa Keshta, President.

Domicilio Expreso Dominicano (Domex) Corp., 3260 Cruger Avenue, Suite 2F, Bronx, NY 10469. *Officer:* Noris Abreu, President (Qualifying Individual).

Dated: August 20, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–19472 Filed 8–24–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. National Bancshares, Inc., Bettendorf, Iowa; to acquire 100 percent of the voting shares of THE National Bank, Edina, Minnesota (in organization).

Board of Governors of the Federal Reserve System, August 19, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–19406 Filed 8–24–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Arrow Financial Corporation, Glens Falls, New York; to acquire 100 percent of the voting shares of Capital Financial Group, Inc., South Glens Falls, New York, and thereby engage in insurance agency activities in a town of less than 5,000 in population, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

Jones Bancshares, L.P., Waycross, Georgia, and PrimeSouth Bancshares, Inc., Blackshear, Georgia (also known as

PrimeSouth Mortgage Company, Jessup, Georgia); to engage in making, acquiring, servicing loans, or other extensions of credit, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 19, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–19405 Filed 8–24–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 2004.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. MNB Holdings Corporation, San Francisco, California; to engage *de novo* in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 20, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–19463 Filed 8–24–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 041 0025]

Cephalon, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 8, 2004.

ADDRESSES: Comments should refer to ''Cephalon, Inc., *et al.*, File No. 041 0025,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jex, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3273.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 9, 2004), on the World Wide Web, at ''*http://www.ftc.gov/os/2004/08/index.htm*.'' A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before September 8, 2004. Comments should refer to ''Cephalon, Inc., *et al.*, File No. 041 0025,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Cephalon, Inc. and Cima Labs, Inc., which is designed to remedy the anticompetitive effects of the acquisition of Cima by Cephalon. Under the terms of the proposed Consent Agreement, Cephalon would be required to grant to a third party company, a fully paid-up, irrevocable license to make and sell a generic equivalent of its breakthrough cancer pain (''BTCP'') drug Actiq in the United States.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order (''Order'').

Pursuant to an Agreement and Plan of Merger dated November 3, 2003, between Cephalon and Cima, Cephalon proposes to acquire 100 percent of the issued and outstanding shares of Cima in a stock-for-stock transaction valued at approximately $515 million. Cephalon also intends to pay consideration such that each issued and outstanding share of Cima common stock will be converted into the right to receive $34.00 in cash. The Commission's Complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the market for prescription drug products indicated for the treatment of BTCP. The proposed Consent Agreement will remedy the alleged violations by replacing the lost potential competition that would result from the merger in this market.

Drugs for the treatment of BTCP help to reduce or eliminate the spikes of intense pain experienced by patients receiving opioid therapy for their chronic pain. By providing a faster onset of pain relief than short-acting oral opioids, BTCP products allow patients to be more active. Because many patients with BTCP are not in hospitals, BTCP products are self-administered and produced in a convenient and portable dosage form. These characteristics of BTCP medications provide terminally ill cancer patients a significant improvement to the quality of their lives. Annual sales of BTCP drugs total more than $200 million in the United States, and the market is growing rapidly.

The U.S. market for drugs to treat BTCP is a monopoly. Cephalon markets Actiq, the only product currently indicated for the treatment of BTCP on the market. Actiq is a fentanyl-containing, berry-flavored lollipop. Cephalon is also developing a sugar free formulation of Actiq which it expects to launch in 2005. Cima is in Phase III of clinical development of its OraVescent fentanyl (''OVF'') product, which is a fast-dissolving, effervescent, sugar-free fentanyl tablet. Cima intends to seek approval from the Food and Drug Administration (''FDA'') by the end of 2004 or in the first quarter of 2005. OVF is expected to enter the U.S. market in 2006 or 2007 and is the product best-positioned to enter the U.S. market and compete with Cephalon's Actiq.

Both branded and generic entry into the market for BTCP products is difficult, time consuming, and costly. Cima is the firm best positioned to enter the market. Other firms that have undertaken efforts to develop BTCP products are well behind Cima. In fact, entry in the BTCP market by any other branded or generic firm is not expected to occur until at least 2008. Both generic and branded entry is delayed by numerous barriers, including intellectual property, regulatory, technological, manufacturing, and marketing. Entry, therefore, would not be likely, timely, or sufficient to counteract the anticompetitive effects of the acquisition.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for BTCP products by eliminating potential competition between Cephalon and Cima. With only one firm currently marketing a BTCP drug to customers in this market (Cephalon), the entry of Cima likely would increase competition and reduce prices for drugs indicated for the treatment of BTCP. Accordingly, allowing Cephalon to control both Cima's product and its own potentially competing product would reduce the number of rivals in the future from two to one and likely force customers to pay higher prices for their BTCP drugs. Moreover, Cephalon's ownership of both products will allow it to undermine generic entry by shifting patients to the patent-protected OVF product prior to generic launch, depriving consumers of the full benefits of generic competition.

The proposed Consent Agreement therefore requires Cephalon to grant a license and transfer all of its technological know-how and intellectual property related to Actiq (''Actiq license assets'') to an upfront buyer no later than ten days after the acquisition is consummated. Cephalon has selected Barr Laboratories, Inc. (''Barr'') as the upfront buyer. Barr is a reputable generic manufacturer and is well-positioned to manufacture a generic version of Actiq. If the Commission determines that Barr is not an acceptable purchaser, or if the manner of the grant, license, delivery or conveyance is not acceptable, Cephalon and Cima must rescind the transaction with Barr and grant, license, deliver or otherwise convey the Actiq license assets to a Commission-approved buyer not later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the Actiq license assets.

The proposed remedy contains several provisions designed to ensure the successful and timely development of OVF, sugar-free Actiq, and generic Actiq. Cephalon must transfer all of its technological know how and intellectual property related to both the sugar and sugar free formulations of Actiq to Barr immediately in accordance with the terms of the Cephalon/Barr License and Supply Agreement. In the event that Barr is not able to manufacture an FDA-approved generic version of Actiq by the date the licenses take effect, the Order requires Cephalon to supply Barr with Actiq to be marketed as a generic. The Order also contains date certain provisions that provide incentives for Cephalon not to delay the development and launch of OVF or sugar-free Actiq. The licenses for the marketing rights for sugar and sugar-free Actiq are triggered by dates certain. These dates certain triggers provide Cephalon with a strong incentive to launch OVF as soon as possible or risk Barr's launch of generic Actiq even before Cephalon's OVF. Further, the Order contains provisions that require Cephalon to timely develop the sugar free formulation by a date

certain, or if it fails to do so, to license Barr five months earlier. With the licenses and technology transfer provided by Cephalon, Barr will be able to compete aggressively in the BTCP market against Actiq. The proposed remedy also prohibits Cephalon from making certain regulatory filings that would delay FDA approval of Barr's generic Actiq. These provisions ensure that Barr will be in a position to launch a generic version of Actiq no later than OVF launch, eliminating the anticompetitive effects of the proposed acquisition and providing patients with earlier access to a lower priced generic product.

Normally a generic remedy would not be sufficient to solve the anticompetitive problems raised by a merger of two branded pharmaceutical competitors because it does not replace the lost promotion and innovation competition between branded companies. In this case, the evidence showed that there is not likely to be any further innovation competition between Cephalon and Cima because, among other things, Actiq is near the end of its patent life. Moreover, Actiq and OVF are both formulations of fentanyl, a readily-available, non-patented active ingredient. The facts showed that an important anticompetitive effect of the merger was to defeat generic competition. The evidence in this case also suggests that, regardless of the merger, Cephalon will no longer promote the sugar-based Actiq formulation after OVF's launch. Finally, any lost brand-to-brand price competition which would have occurred between Cephalon and Cima is more than restored by the early entry of lower priced generic versions of sugar and sugar-free Actiq. As a result, the generic remedy replaces the lost price competition that likely would have occurred. The proposed remedy would bring significant benefits to patients and would reverse the anticompetitive effects of the proposed acquisition.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission, Commissioner Thompson dissenting, and Commissioner Harbor recused.

Donald S. Clark,

Secretary.

Statement of the Commission

Today, the Commission released a proposed complaint and accepted for public comment a proposed consent order that obtains significant relief regarding Cephalon Inc.'s proposed acquisition of Cima Labs, Inc. The complaint alleges that the acquisition may substantially lessen competition in the market for the manufacture and sale of prescription drug products to treat breakthrough cancer pain (BTCP). These medications bring many cancer patients significant improvement in the quality of their lives. Cephalon's product Actiq is the only treatment on the market indicated for BTCP. Cima Labs is developing oravescent fentanyl (OVF), which is in Phase III clinical trials and is the product best positioned to enter the market.

To address potential anticompetitive effects that may arise from the transaction as originally contemplated, the Commission has required the merging parties to grant a license and transfer all of the technological know-how for Actiq to Barr Laboratories, Inc., a leading generic drug manufacturer. This transfer will significantly expedite the entry of a generic BTCP product. Our experience and the empirical literature [1] demonstrate that the entry of a generic BTCP product will provide a substantially lower-priced alternative to consumers and thereby significantly lower the average price of BTCP medication. The availability of a substantially lower-priced BTCP medication will be particularly important for patients on limited budgets or without insurance.

Normally, creation of a generic competitor would be insufficient to solve the anticompetitive problems raised by a merger of two branded pharmaceutical competitors. In the usual case, such a remedy would not replace the lost promotion and innovation competition between the branded companies regarding the particular illness the companies competed to treat. In this case, however, the facts showed that an important anticompetitive effect of the merger was to defeat generic competition. The facts further showed that there is not likely to be any further innovation competition between Cephalon and Cima for BTCP products because, among other things, Actiq is near the end of its patent life and neither Cephalon nor Cima has any other BTCP products in the pipeline. Moreover, Actiq and OVF are both formulations of fentanyl, a readily-available, non-patented active ingredient.

The earlier entry of lower-priced generic Actiq, made possible by the remedy, will more than restore any loss in brand-to-brand price competition that would have occurred between Cephalon and Cima. The average price that consumers will pay for BTCP medication will be lower after the merger and the proposed remedy than it would have been without the merger and remedy. In addition, the consent order ensures that the competition between Actiq and its generic equivalent will be robust. Because the generic product should be on the market no later than the launch of OVF,[2] Cephalon will be unable to shift patients preemptively to OVF to undermine generic competition. Thus, the proposed remedy would bring significant benefits to patients and would reverse the anticompetitive effects of the proposed acquisition.

Commissioner Thompson has dissented, arguing that the Commission should have sought a preliminary injunction to block this transaction on the grounds that there is a group of consumers who would purchase a branded BTCP product and would thus face higher prices. However, the evidence is not clear that this will happen. Even if it were to happen, this outcome would be a well-recognized result of the introduction of generic competition.[3] In the past, the Commission has recognized and resolved the particular tradeoff that concerns Commissioner Thompson today. The Commission, including Commissioner Thompson, has recognized the net benefits that arise from the entry of generic pharmaceutical products and consequently has devoted substantial resources to identify and prohibit anticompetitive practices that have made the entry of generic drugs more difficult.[4] As in our earlier cases, the

[1] This literature is reviewed at Generic Drug Entry Prior to Patent Expiration: An FTC Study 9 (July 2002).

[2] The license to Barr provided by the order enables Barr to begin marketing the generic versions of Actiq at the earliest of final FDA approval of OVF or various specified dates. If Cephalon delays the introduction of OVF, the license allows Barr to market the generic products at specific dates that approximate the time that the parties' premerger documents predict OVF would have been launched.

[3] In the face of generic entry, branded companies frequently raise the price for branded products that did not previously face such competition. *See* supra note 1.

[4] *See, e.g.*, Schering-Plough Corp., Dkt. No. 9297, available at *http://www.ftc.gov/os/adjpro/d9297/031218commissionopinion.pdf* (agreement between branded and generic manufacturers to delay entry of generic); Biovail Corp., Dkt. No. C–4060 (consent order); available at *http://www.ftc.gov/os/2002/04/biovailcomplaint.htm* (wrongful Orange Book listing for Tiazac); Biovail Corp. and Elan Corp., Dkt. No. C–4057 (consent order), available at *http://www.ftc.gov/os/2002/06/biovailelancmp.pdf*

benefits that earlier generic entry will bring to consumers of BTCP treatment in terms of lower average prices greatly exceed any price increases to the less price-sensitive patients who may continue to choose branded products.[5] Contrary to Commissioner Thompson's claim, the underlying rationale for the relief mandated in this case is supported by unanimous Commission precedent.

Dissenting Statement of Commissioner Mozelle W. Thompson

The Commission today accepted, subject to public comment and final approval, a proposed settlement from Cephalon, Inc., and Cima Labs, Inc. This settlement is intended to remedy the likely anticompetitive effects of Cephalon's $515 million acquisition of Cima in the $200 million market for drugs that treat terminally ill patients for sporadic breakthrough cancer pain (''BTCP''). I must dissent from the Commission's acceptance of the unprecedented proposed remedy because neither the merging parties nor the investigation have demonstrated that the remedy would substantially restore the lost competition between Cephalon and Cima.

I strongly concur with the allegations in the Commission's complaint, which correctly alleges that Cephalon is a monopolist in the BTCP drug market. It also alleges that Cephalon unlawfully proposes to acquire Cima, the best-positioned potential competitor who would otherwise have likely entered the market within the next several years—well ahead of other potential entrants.

''Every order in a merger case has the same goal: to preserve fully the existing competition in the relevant market or markets.'' [1] The proposed settlement in this case—which seeks to restore the lost branded competition from Cima by facilitating the entry of a generic product—fails because it cannot meet this goal. Accordingly, the Commission should have rejected the proposed settlement. Further, because the Cephalon/Cima merger in substance appears to be for the primary purpose of allowing Cephalon to gain control of Cima's new BTCP product,[2] I believe that the Commission should have sought to block this merger in court.

The Commission may challenge a proposed transaction that it believes will lessen competition, or it may take a settlement that restores the competition lost. Historically, the Commission has been extraordinarily successful in identifying and blocking proposed mergers that are likely anticompetitive. In a case such as this one, which involves a monopolist's acquiring the best-positioned potential entrant, I am confident that the Commission would be able to successfully block the proposed merger and preserve competition. Indeed, I found the evidence supporting the Commission's complaint against Cephalon and Cima particularly compelling and sufficient to demonstrate that the proposed combination would eliminate the expected future competition between the two companies. This elimination of future competition would allow Cephalon to keep BTCP drug prices at monopoly levels, which would harm cancer patients—a particularly vulnerable group of consumers. Litigation and a district court's entry of a ''full-stop'' injunction would have been warranted because of the unusual strength of this antitrust case.

I recognize that in many Commission merger investigations, merging parties offer a settlement to avoid a Commission challenge to their proposed transaction. In such cases, ''the burden of coming forward with adequate restructure proposals should be on the sponsors of the merger.'' [3] Furthermore, divestiture is typically employed where selling the assets used to manufacture and sell one company's competing product to a qualified new competitor can effectively replace the lost competition.[4] Perhaps because divesting one of the merging companies' branded products is the most effective and efficient means of restoring lost competition, the Commission has never taken a settlement for a pharmaceutical merger that requires a respondent to take measures to facilitate generic entry where companies are marketing (or here, where one is marketing and the other likely soon will also be selling) branded products. I understand the argument that by requiring Cephalon to license generic entry, such entry is more certain and more quickly achieved, thus assuring that some customers would gain significant savings. However, while generic products and branded products are interchangeable to some extent, they are not necessarily considered reasonable substitutes by a significant segment of consumers in the typical pharmaceutical market. As a result, the Commission historically has been unwilling to trade away a branded product for a generic one in a Commission merger settlement.

I acknowledge the argument in this case that some end-stage cancer patients who buy BTCP drug products may be more price sensitive than customers in typical pharmaceutical markets because they do not have sufficient insurance coverage. But the investigation failed to develop any empirical or other compelling evidence substantiating that this particular market has such exceptional characteristics that a generic product could serve as a substitute for a branded product. Without such compelling evidence, the Commission should not accept a proposed settlement because ''(t)he risk of inadequate relief * * * should not be borne by consumers.'' [5] The parties likewise failed to present evidence that shows that facilitating generic entry in the BTCP drug market will substantially replace the competition lost between Cephalon and Cima. By contrast, I found it particularly troubling that based on a range of economically reasonable assumptions about this pharmaceutical market, the Commission could have concluded just as easily that less price-sensitive patients could well suffer price increases that may possibly amount to tens of millions of dollars,

(agreement among generic drug companies to divide market for generic Adalat CC); Abbott Labs., Dkt. No. C–3945 (consent order), complaint available at *http://www.ftc.gov/os/2000/05/c3945complaint.htm*; Geneva Pharm., Inc., Dkt. No. C–3946 (consent order), complaint available at *http://www.ftc.gov/os/2000/05/c3946complaint.htm*; Hoechst Marion Roussel, Inc., Dkt. No. 9293 (consent order), complaint available at *http://www.ftc.gov/os/2000/03/hoechstandrxcomplaint.htm*.

[5] In his dissent, Commissioner Thompson relies on a statement in the old case of *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 371 (1963), that anticompetitive mergers cannot be justified by some ''ultimate reckoning of social or economic debits and credits.'' We support this general principle. The issue here, however, is whether the transaction, as modified by the Order, can be considered anticompetitive in the first place when possible price increases are weighed against more likely and much larger price decreases to the same group of customers. In any merger case, predictions of procompetitive and anticompetitive effects are inherently uncertain, and—whether we choose to challenge or to pass—there often is a risk that one set of consumers will benefit and another set will lose. We are choosing between probabilities rather than sets of consumers.

[1] Staff of the Bureau of Competition, ''Frequently Asked Questions About Merger Consent Order Provisions,'' (Answer to Question 1.), available at *http://www.ftc.gov/bc/mergerfaq.htm*.

[2] Cephalon outbid several alternative suitors, whose deals with Cima would not likely have raised antitrust concerns.

[3] Robert Pitofsky, ''The Nature and Limits of Restructuring in Merger Review,'' February 17, 2000, available at *http://www.ftc.gov/speeches/pitofsky/restruct.htm*.

[4] Staff of the Bureau of Competition, ''Statement of the Federal Trade Commission's Bureau of Competition on Negotiating Merger Remedies,'' (In discussion under ''The Assets to Be Divested''), available at *http://www.ftc.gov/bc/bestpractices/bestpractices030401.htm*.

[5] Richard G. Parker and David A. Balto, ''The Evolving Approach to Merger Remedies,'' at 2, available at *http://www.ftc.gov/speeches/other/remedies.htm*.

notwithstanding the licensing of generic entry following the merger.

The majority statement cites other Commission challenges to restraints as support for picking which consumers will win and which will lose in pharmaceutical markets. However, these challenged restraints were intended to, and did, hinder generic entry, and the thrust in our remedies in these cases is to allow free competition to work. A subtle but important policy perspective is that the free market picked the winners and losers; we only allowed the market to work. The Commission did not manipulate the outcome of these markets.

In reading the majority's statement, I observe though that the majority unfortunately compares market outcomes in its statement instead of evaluating the Commission's appropriate role in providing antitrust protection in American markets. Our Clayton Act, Section 7 mandate is simple: protect markets so that the competitive process provides the market outcomes, such as quantity produced, prices charged, and who wins and loses financially. I disagree with a merger remedy policy that instead embraces manipulating the structure of market competition and trades off recognized (or probable) benefits for one segment of consumers for recognized (or probable) harm to another. As the Supreme Court over 40 years ago established, antitrust policy does not countenance mergers that are anticompetitive but are, ''on some ultimate reckoning of social or economic debits and credits, * * * deemed beneficial.'' [6] This policy principle equally—if not even more so—applies to government-imposed restructurings in merger remedies. Accordingly, I believe that the Commission should refrain from accepting settlements that expressly contemplate benefitting one group of customers at the expense of other customers, especially where challenging a merger would likely be successful and the Commission is able to fulfill its mandate to protect all consumers from antitrust harm. For all of these reasons, I believe that the Commission should have rejected the proposed settlement and challenged this transaction.

As a final note, I recognize that the pharmaceutical industry over the recent past has transformed itself to an industry where larger, established companies refrain from developing the bulk of their products internally and instead often acquire smaller R&D companies as a means of stocking their portfolio of products. This transaction provides the Commission with the opportunity to demonstrate its commitment to aggressively protect pharmaceutical consumers under these changed market dynamics. Instead, I fear that the Commission today may be signaling the industry that dominant firms in pharmaceutical markets now have the antitrust ''green light'' to acquire competitors or potential entrants in exchange for a remedy that restructures markets in ways that trumps the free market decision as to who will benefit from the market and who will be harmed, as well as the extent of these effects on different groups. Accordingly, I believe that the Commission should have rejected the proposed settlement and challenged the transaction in order to protect fully consumers in the BTCP drug market and to signal the Commission's antitrust resolve in both challenging anticompetitive mergers and only accepting remedies that minimize consumer exposure to anticompetitive risk.

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[6] Setting out the bounds of Section 7 enforcement, the Court further cautions decision makers: ''A value choice of such magnitude is beyond the ordinary limits of judicial competence, and in any event has been made for us already, by Congress when it enacted the amended § 7.'' *United States* v. *Philadelphia National Bank,* 83 S.Ct. 1715, 1745 (1963). The majority statement strains in a failed attempt to distinguish away this Supreme Court case. Regardless of whether customers are within different geographic markets or within different segments of a relevant product market, a reasonable reading of the case is that the Supreme Court does not condone the type of consumer welfare tradeoffs that the majority statement endorses.

FEDERAL TRADE COMMISSION

[Docket No. 9314]

Piedmont Health Alliance, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 10, 2004.

ADDRESSES: Comments should refer to ''Piedmont Health Alliance, Inc., *et al.*, Docket No. 9314,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: David Narrow, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2744.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 3.25(f) of the Commission's Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 11, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/08/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before September 10, 2004. Comments should refer to ''Piedmont Health Alliance, Inc., *et al.*, Docket No. 9314,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary,

Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Piedmont Health Alliance, Inc. (''PHA''), and ten individual physicians who are named as Respondents (''Physician Respondents'') in the complaint issued by the Commission on December 22, 2003.[1] The agreement settles charges that PHA and the ten Physician Respondents (together ''Respondents'') violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and facilitating agreements among PHA's physician members to fix prices and other terms on which the physicians would deal with health plans and other purchasers of physician services (''payors''), and to refuse to deal with payors except on collectively-determined terms. On July 2, 2004, the case was withdrawn from adjudication, so that the Commission could consider a proposed consent agreement and decision and order. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and any comments and decide whether to withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate comment on the proposed order. The analysis does not constitute an official interpretation of the agreement and proposed order and does not modify their terms in any way. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Respondents that they violated the law or that the complaint's alleged facts—other than jurisdictional facts and facts admitted in the Respondents' answer to the complaint—are true.

The Complaint Allegations

PHA, a for-profit corporation, is a physician-hospital organization (''PHO'') that includes physicians, hospitals, and other licensed health care providers in Alexander, Burke, Caldwell, and Catawba counties in western North Carolina (known as the ''Unifour'' area). PHA includes approximately 450 physicians, representing the substantial majority of physicians in the Unifour area, and three of the five Unifour area hospitals, including Frye Regional Medical Center (''Frye''), Caldwell Memorial Hospital (''Caldwell Memorial''), and Grace Hospital (''Grace'').[2]

In 1993, Frye's Chief Executive Officer (''CEO'') developed a plan for a PHO that would include Frye and the physicians practicing at Frye. He hired a consultant to survey the physicians regarding what they would expect from a PHO. The consultant reported that the physicians ''stated a need to form the group to negotiate with group clout and power'' and ''maintain their income'' in anticipation of the arrival of managed care organizations in the Unifour area. Frye's CEO and Chief Operating Officer, along with eight physicians practicing at Frye, formed a steering committee responsible for establishing and organizing the PHO.

PHA was established in 1994 to facilitate physician collective bargaining with payors and obtain more favorable fees and other terms than PHA's physician members could obtain by dealing individually with payors. PHA established a Contracts Committee to negotiate contracts with payors on behalf of PHA's physician members, subject to approval by PHA's Board of Directors. In 1996, PHA expanded to include Caldwell Memorial and Grace, both nonprofit hospitals, and their respective medical staffs.

The Board manages and controls PHA. The Board has 14 physician directors elected by PHA's physician members, and six hospital directors—two representing each hospital member (but with only one vote per hospital member). A majority of PHA physician directors and two of the three voting hospital directors must approve each payor contract entered into on behalf of PHA's members. Since 1994, the Board voted to approve more than 50 contracts containing physician fee schedules that PHA collectively negotiated with payors.

PHA hired actuaries and other consultants to develop physician fee schedules containing price terms that PHA demanded from payors as a condition of contracting with PHA for physician services. PHA generally negotiated single-signature contracts with payors for the services of all PHA's physician members, and committed to attempt to negotiate contracts with payors that included all PHA physician members. Payors that failed to accede to PHA on price and other contract terms were denied access to PHA's physician members for inclusion in the payors' provider networks. PHA's physician members agreed to participate in all PHA's payor contracts, to accept the prices for their services that PHA negotiated on their behalf, and to terminate any individual contracts they had with a payor once PHA entered into a contract with that payor. PHA's physician members also agreed not to deal individually or through any other organization with any payor with which PHA was attempting to negotiate, or had signed, a contract jointly on behalf of PHA's members.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[1] The ten Physician Respondents (all M.D.s) are: Peter H. Bradshaw, S. Andrews Deekens, Daniel C. Dillon, Sanford D. Guttler, David L. Harvey, John W. Kessel, A. Gregory Rosenfeld, James R. Thompson, Robert A. Yapundich, and William Lee Young III.

[2] The Commission previously issued a separate consent order related to this case against Frye and its parent corporation, Tenet Healthcare Corporation, both of which are for-profit corporations. *In the Matter of Tenet Healthcare Corporation and Frye Regional Medical Center, Inc.*, Dkt. No. C–4106 (consent order issued January 29, 2004).

The Physician Respondents are PHA shareholders. All have been voting Board members and participated in Board decisions to approve or reject payor contracts containing fixed physician prices, authorize negotiations over the prices payors must pay for PHA physician services, authorize development of physician fee schedules for PHA's use in contracting with payors, terminate contracts between PHA and payors, and approve Contracts Committee recommendations concerning price and other payor contract terms. In addition to serving on the PHA Board, four Physician Respondents were members of the Contracts Committee, which more directly negotiated with payors over physician prices and other contract terms. The Physician Respondents and all PHA physician members are compensated for their professional medical services under fee schedules contained in PHA-negotiated contracts with payors.

In 2001, PHA prospectively adopted a new contracting method that it called a ''modified messenger model.'' This contracting method did not affect existing contracts between PHA and payors or contracts in final stages of negotiation. Since 2001, PHA renewed or entered several payor contracts without using the ''messenger model.'' The complaint alleges that, in setting up the ''modified messenger model,'' PHA physician members reported to PHA the minimum price terms—*i.e.*, standing offers or ''targets''—each would accept if offered by a payor. To help the physicians set their individual target fees, PHA provided each practice group with specific information about the fees that practice was receiving from several payors under existing PHA-negotiated payor contracts. PHA's physicians used these previously fixed prices in determining the prices to demand under contracts processed under PHA's new contracting method.

PHA used this contracting method with two health plans: United HealthCare of North Carolina, Inc., and Cigna HealthCare of North Carolina, Inc. PHA negotiated with each health plan over the aggregate level of payments the health plan would pay for physician services—stated as a percentage of Medicare's reimbursement for the same services. PHA also negotiated and agreed with United and Cigna on other price-related contract terms, such as periodic percentage increases in physician fee levels to occur at certain times. To compel the payor to accept PHA's terms, PHA confronted each payor with actual or threatened contract termination, and thus loss of its provider network, during the negotiation process. Once aggregate payment levels and terms were determined, PHA had its actuary develop fee schedules to be used under each contract. This determined how much each PHA physician would receive for specific medical procedures—in effect, dividing the ''pie'' that was the negotiated aggregate reimbursement amount. Only after the payor agreed to both the aggregate payment level and the fee schedule did PHA determine which physician practices ''matched'' the payor's ''offer'' and thus would be included in the payor's provider network under the PHA contract.

The complaint alleges that, as a result of Respondents' conduct, prices for physician services in the Unifour area were maintained at, or increased to, artificially high prices in the Unifour area, and consumers have been deprived of the benefits of competition among physicians. By facilitating agreements among PHA member physicians to deal only on collectively-determined terms, and through PHA's and its members' actual or threatened refusals to deal with health plans that would not meet those terms, PHA and the Physician Respondents are alleged to have violated Section 5 of the FTC Act. PHA's collective negotiation of fees and other competitively significant terms of dealing has not been, and is not, reasonably necessary to achieving any efficiency-enhancing integration.

The Proposed Consent Order

The proposed consent order is designed to prevent continuation or recurrence of the illegal conduct charged in the complaint, and to facilitate readjustment of the market for physician services in the relevant area to one where physicians competitively determine the prices they charge to payors for medical services—without PHA's involvement on the physicians' behalf. The proposed order prohibits PHA for a period of time from operating a ''messenger model'' or any other arrangement for physicians in their dealings with payors. Prompting this prohibition is, as the complaint alleges, PHA's previous use of a self-described ''messenger'' contracting mechanism that failed to eliminate collective price setting and negotiation with payors over physician fees. The prohibition should enable payors to deal with physician practices, and establish prices for physician services, without the risk of cartelization through PHA. Such a period, which likely will involve multiple contracting cycles between payors and physicians, will help assure that any price information that physicians later use in participating in any messenger arrangement will reflect competitive price levels, rather than collectively negotiated prices—as allegedly was the case in PHA's ''modified messenger model.''

The proposed order allows Respondents to engage in various forms of legitimate conduct that do not improperly impair competition and that will not interfere with effective remedial relief through the proposed order. For example, the proposed order does not prohibit the Physician Respondents from participating in any legitimate financially integrated or clinically integrated joint arrangements with other physicians. PHA also is not prohibited from participating in arrangements that involve solely hospital services, or certain activities involving physician services, as specified in the proposed order. The proposed order also permits PHA to undertake activities necessary to operate certain programs, such as its information technology and medical management programs, that have procompetitive potential and do not involve physicians' fees or other contracting terms between physicians and payors. Other parts of the proposed order are similar to orders that the Commission has issued to settle charges relating to allegedly unlawful agreements to eliminate physician competition and raise the prices of physician services.

The proposed order's specific provisions are as follows:

The core prohibitions are contained in Paragraphs II, III, V, and VII. Paragraph II.A prohibits PHA and the Physician Respondents from entering into, participating in, or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving PHA. Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Respondents from facilitating exchanges of information between or among physicians concerning whether, or on what terms, including price terms, they are willing to contract with a payor. Paragraph II.C bans them from attempting to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D prohibits Respondents from inducing anyone else to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing health care providers' alleged collective bargaining with payors, certain kinds of potentially procompetitive agreements are excluded from the general prohibition on joint negotiations. The Physician Respondents are not prohibited from engaging in conduct that involves only physicians in their own group practice, or that is reasonably necessary to form or participate in a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement,'' as these terms are defined and have been used in prior Commission orders. Beginning no sooner than thirty (30) months after the proposed order becomes final, PHA may engage in conduct that is reasonably necessary to form or participate in such joint arrangements, subject to certain size and other limitations.

The size limitations for these allowable arrangements correspond to the safety zones for physician network joint ventures that are set forth in the joint Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care,[3] and provide for different sizes depending on whether physicians' participation in the joint venture is exclusive or non-exclusive.[4] These size restrictions are intended to assure that any such joint arrangements involving PHA—which, as presently constituted, includes approximately three-fourths of the area's physicians—do not obtain or exercise substantial market power by involving an unduly large number of area physicians.[5] The size restrictions apply only to physician network joint ventures undertaken by PHA. The proposed order does not affect any joint ventures undertaken by area physicians outside of PHA, or restrict the Physician Respondents or any other PHA physician members from participating in qualified risk-sharing or clinically-integrated joint arrangements outside of PHA that are larger than those that PHA is allowed to undertake.

Paragraph IV requires PHA to notify the Commission about such arrangements prior to negotiating on behalf of the arrangement's members or before those members jointly discuss any terms of dealing with a payor. Neither PHA nor the Physician Respondents are precluded from engaging in conduct that is necessary to continue PHA's preexisting ''bonus plan'' contracts with certain self-insured employers, which appear to involve the sharing of some financial risk among PHA's physician members. This exception does not necessarily mean that the bonus plan contracts are qualified joint arrangements as defined in the proposed order.

As defined in the proposed order, a ''qualified risk-sharing joint arrangement'' must satisfy two conditions. All physician and hospital participants must share substantial financial risk through the arrangement and thereby create incentives for the physician and/or hospital participants jointly to control costs and improve quality by managing the provision of services. Also, any agreement concerning price or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

As defined in the proposed order, a ''qualified clinically-integrated joint arrangement'' also must satisfy two conditions. All physician and hospital participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among physicians and/or hospitals, to control costs and ensure the quality of services provided. Also, any agreement concerning price or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

In the event that PHA forms a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, Paragraph IV of the proposed order requires PHA, for five years, to notify the Commission at least 60 days prior to initially contacting, negotiating, or entering into agreements with payors concerning the arrangement. Notification is not required for subsequent contacts, negotiations, or agreements with payors pursuant to any arrangement for which notice was already given under Paragraph IV. Paragraph IV sets out the information necessary to make the notification complete, and also provides the Commission with the right to obtain additional information regarding the arrangement before PHA enters into the arrangement.

Paragraph III of the proposed order prohibits PHA from preparing, maintaining, or participating in the preparation of any fee schedule regarding physician services. This requirement is a response to PHA's alleged history, as set forth in the complaint, of having agents and consultants prepare fee schedules and using the fee schedules in negotiations with payors.

Paragraph III also prohibits PHA from collecting or maintaining information about price and other terms under which physicians deal, or are willing to deal, with payors. This addresses PHA's alleged practices in collecting and using such information as part of its so-called ''modified messenger model.'' Paragraph III excepts from these prohibitions activities necessary to maintain preexisting bonus plan contracts or to form or operate a qualified joint arrangement permitted under Paragraph II. Paragraph III also excepts actions necessary for, and undertaken solely for the purpose of, entering messenger arrangements as permitted in Paragraph V (discussed below) or implementing information technology services (for practice management and electronic medical records software for physician practices, or for medical management services provided to payors). Implementing information technology services, which involves activities that PHA already has begun, may have significant potential for efficiency and quality enhancement for medical services, and itself does not appear to present a significant risk of being used in anticompetitive ways, particularly in light of the proposed order's other provisions.

[3] U.S. Department of Justice and the Federal Trade Commission, Statements of Antitrust Enforcement Policy in Health Care at Statement 8, Part A (August 1996) (safety zones for physician network joint ventures) (available at *http://www.ftc.gov/reports/hlth3s.htm*).

[4] Permissible joint ventures by PHA, where the physicians participate in the arrangement on a non-exclusive basis, are generally limited to having no more than 30% of the physicians in any medical specialty practicing either in Catawba County or in the Unifour area. Permissible joint ventures by PHA, where the physicians participate in the arrangement on an exclusive basis, are generally limited to having no more than 20% of the physicians in any medical specialty practicing either in Catawba County or in the Unifour area. Catawba County contains the substantial majority of PHA's physician members, and is where most of the Unifour area's large employers, and the largest concentration of the area's population, are located. Applying the percentage limitations to both areas—Catawba County and the Unifour—avoids the possibility that a joint arrangement by PHA could have a higher percentage of Catawba County physicians, while still meeting the allowable percentage limitations for the Unifour as a whole. Despite the general size limitations, in either exclusive or non-exclusive arrangements, PHA is permitted to have non-exclusive participation by physicians in medical specialties where the limited number of such local specialists otherwise would not permit their participation within the proposed order's percentage limitations.

[5] The safety zones in the Statements of Antitrust Enforcement Policy in Health Care do not establish upper size limits on lawful arrangements, but restricting PHA to size limits is appropriate in light of the complaint's allegations of PHA's unlawful conduct and the resulting anticompetitive effects. The size limits for qualified joint arrangements in the proposed order apply for 10 years after the order becomes final, rather than for the 20 years that apply to Paragraph II's general prohibitions.

Paragraph V of the proposed order prohibits PHA from acting as an agent for physicians, or from entering into any type of messenger arrangement between physicians and payors, for thirty (30) months after the proposed order becomes final. It also prohibits PHA from entering into any type of messenger arrangement, other than acting as a simple transmitter of offers and responses between payors and individual physician practices, for an additional twenty-four (24) months—*i.e.*, until fifty-four (54) months after the proposed order becomes final.[6]

The first ''cooling off'' period—of 30 months—eliminates PHA involvement between physicians and payors, to facilitate payors' ability to deal directly with individual physician practices and increase physicians' incentive to deal directly with payors (or deal through other arrangements that do not have PHA's alleged history of fostering anticompetitive agreements). The second, 24-month-long prohibition on all but strictly limited-in-form messenger arrangements—*i.e.*, the prohibition on arrangements that might involve, for example, PHA's collection and maintenance of price and other information on physicians' terms of dealing—is intended to permit PHA to re-enter the physician contracting business, but with additional safeguards against recurrence of the abuses, under the guise of ''modified messenger model,'' that the complaint alleges. Should PHA ultimately engage in a standing offer or similar messenger arrangement, the physician services market will have had at least four and one-half years to restore—with little or no PHA involvement—the competitive balance allegedly lost due to the conduct charged in the complaint.

Paragraph VI of the proposed order requires PHA to provide the Commission with prior notice before entering into any messenger arrangement permitted by Paragraph V of the proposed order.

Paragraph VII requires PHA to distribute the complaint and order, within 30 days after the order becomes final: to every hospital, physician, or other provider that participates in PHA; to each officer, director, manager, and employee of PHA; and to each payor with which PHA has had any contact since January 1, 1997, but with which PHA does not currently have a contract. For a period of five years after the order becomes final, PHA also must distribute a copy of the order and complaint to new members and officials of PHA, and any new payors with which it commences doing business.

With regard to payors with which PHA currently has a contract for the provision of physician services, Paragraph VII of the proposed order contains provisions concerning the termination of the contracts, which, according to the complaint, embody price-fixed physician fees. Paragraph VII.A requires PHA to provide the payors with which it has a contract with a copy of the order and complaint, as well as a notification letter apprising the payors of certain contract termination rights regarding their contracts with PHA. For payors that have preexisting ''bonus plan'' contracts with PHA, which are listed in Confidential Appendix A to the proposed order, the notification letter informs the payors that they may terminate their existing contracts with PHA, upon written request, without any penalty or charge. With regard to payors holding contracts with PHA, other than the payors with bonus plan contracts, the notification letter likewise informs the payors that they may terminate their contracts without penalty, upon providing written request. However, the letter also apprises payors with non-bonus-plan contracts that, if they do not voluntarily terminate their contracts within six months after the order becomes final (or the contract does not reach its scheduled termination date by that time), then the contract will terminate as of six months after the order becomes final. With regard to certain employers that have preexisting, non-bonus-plan direct contracts with PHA, and which are identified in Confidential Appendix B of the proposed order, in order to help minimize any possible disruption to their health benefits programs, Paragraph V of the proposed order permits PHA to serve as a simple messenger for any subsequent contract offers by these payors to PHA's physician members.

Termination of the contracts between PHA and payors for the provision of physician services is required to eliminate the payment to PHA's physician members of what the complaint alleges are collectively negotiated, price-fixed fee levels. The provision allowing payors six months during which they may request voluntary termination of their contracts with PHA is intended to provide them with flexibility and facilitate their making alternative arrangements to provide the services now provided through their contracts with PHA.

The mandatory termination date also obviates the risk that any payor would face competitive disadvantage by voluntarily terminating a PHA contract—and not have a physician network in place—before rival payors have terminated their contracts. Establishing a mandatory termination date provides an incentive for all payors to act promptly to make alternative arrangements for a physician network before the termination date, makes clear to PHA's physician members that they promptly must begin to deal directly (or outside of PHA) with the payors if they wish to continue being in the payors' networks, and eliminates the possible disincentive for a payor to be the first to voluntarily terminate its contract with PHA because it would be the first payor in the market not to have a contracted network of physicians.

Paragraph VII also requires PHA, for five years, annually to publish a copy of the order and complaint in a report or newsletter sent to its participating providers, and file certain compliance reports with the Commission. Paragraphs VIII, IX, and X provide for various compliance reports and notifications by PHA and the Physician Respondents. Paragraph XI obligates the Respondents to cooperate in certain ways with any Commission inquiry into their compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

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[6] The time periods for these prohibitions are based on the requirement in Paragraph VII.D of the proposed order that all of PHA's contracts, with the identified exceptions, be terminated no later than six (6) months after the date the order becomes final.

FEDERAL TRADE COMMISSION

[File No. 041 0014]

Virginia Board of Funeral Directors and Embalmers; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 13, 2004.

ADDRESSES: Comments should refer to ''Virginia Board of Funeral Directors and Embalmers, File No. 041 0014,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Davis, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3530.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 16, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/08/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before September 13, 2004. Comments should refer to ''Virginia Board of Funeral Directors and Embalmers, File No. 041 0014,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with the Virginia Board of Funeral Directors and Embalmers (the ''Board'' or ''Respondent''). The Agreement has been placed on the public record for thirty (30) days for receipt of comments from interested members of the public. The Agreement is for settlement purposes only and does not constitute an admission by the Board that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

I. The Commission's Complaint

The proposed Complaint alleges that Respondent, an industry regulatory board of the Commonwealth of Virginia, has violated Section 5 of the Federal Trade Commission Act. Specifically, the proposed Complaint alleges that the Board has unlawfully restrained or eliminated price competition among the providers of funeral goods and services in Virginia.

The Board is the sole licensing authority for providers of funeral goods and services in Virginia and is authorized by Virginia statute to take disciplinary action against licensees who violate any rule promulgated by the Board. The Board is composed of nine members, seven of whom are required to be funeral service licensees themselves.

The proposed Complaint alleges that the Board has restrained trade by agreeing to, promulgating, and implementing a regulation (18 Va. Admin. Code section 65–30–50(C) (West 2003) (''18 VAC 65–30–50(C)'')) that prohibited funeral licensees from advertising the prices of certain products and services they sell.[1] Board regulation 18 VAC 65–30–50(C) read: ''No licensee engaged in the business of preneed funeral planning or any of his agents shall advertise discounts; accept or offer enticements, bonuses, or rebates; or otherwise interfere with the freedom of choice of the general public in making preneed funeral plans.''

The proposed Complaint further alleges that the Board's conduct was anticompetitive because it had the following effects: the conduct deprived consumers of truthful information about prices for funeral products and services; the conduct prevented licensees from disseminating truthful information about their prices for funeral products and services; the conduct deprived consumers of the benefits of vigorous price competition among Board licensees; and the conduct caused consumers to pay higher prices for funeral products and services than they would have in the absence of that conduct.

II. Terms of the Proposed Consent Order

The proposed Order would provide relief for the alleged anticompetitive effects of the conduct principally by means of a cease and desist order barring the Board, either by the enactment or enforcement of a new regulation or by the enforcement of any current regulation, from prohibiting, restricting, impeding, or discouraging

[1] As a result of the investigation, the Board has removed 18 VAC 65–30–50(C) from its regulations. *See* Va. Regs. Reg., vol. 20, issue 21 at 1 (2004).

any person from engaging in truthful and non-misleading price advertising of at-need or preneed funeral products, goods, or services.

Paragraph II of the proposed Order bars the Board from in any way acting to restrict, impede or discourage its licensees from any truthful and non-misleading price-related advertising. Paragraph II of the proposed Order further bars the Board from enforcing any regulation, including 18 VAC section 65–30–50(C), the effect of which regulation would be to prevent licensees from notifying potential customers of prices or discounts through the use of truthful and non-misleading advertising. As discussed below, the proposed Order does not prohibit the Board from adopting and enforcing reasonable rules to prohibit advertising that the Board reasonably believes to be materially fraudulent, false, deceptive, or misleading.

Paragraph III of the proposed Order requires the Board to eliminate any regulation, the effect of which regulation would be to prevent licensees from notifying potential customers of prices or discounts through the use of truthful and nonmisleading advertising.

Paragraph IV of the proposed Order requires the Board to prominently publish the proposed Order along with a letter explaining the terms of the proposed Order in the Board's newsletter. Paragraph V of the proposed Order requires the Board to send to its licensees the proposed Order, along with a letter explaining the terms of the proposed Order. Paragraph VI of the proposed Order requires that the Board prominently publish the proposed Order on its World Wide Web site. Each of the methods of publishing the proposed Order is intended to make clear to licensees that they are not restricted from engaging in truthful and non-misleading price-related advertising, including the advertising of discounts.

Paragraphs VII and VIII of the proposed Order require the Board to inform the Commission of any change that could affect compliance with the proposed Order and to file compliance reports with the Commission for a number of years. Paragraph IX of the proposed Order states that it will terminate in twenty years.

III. The Conduct Prohibited Under the Order

The proposed Order prohibits the Board from discouraging its licensees from using truthful and non-misleading advertisements of prices and discounts. The proposed Order does not prohibit the Board from adopting and enforcing reasonable rules to prohibit advertising that the Board reasonably believes to be materially fraudulent, false, deceptive, or misleading. Because such a rule would not violate the proposed Order, and because the issues raised by this case arise frequently, it is appropriate to address the analysis required in some detail, focusing on the current restraint of the Board.

A. Antitrust Analysis of the Legality of Competitive Restraints

The Board's regulation was an agreement among competitors not to advertise price discounts. The fundamental question regarding the legality of restraints agreed upon between competitors is ''whether or not the challenged restraint enhances competition.'' [2] A framework for analysis of the competitive impact of such agreements was described recently by the Commission in *PolyGram Holdings.*[3] Under that framework, the plaintiff has the initial burden of showing that the restriction is ''inherently suspect'' in that it has a likely tendency to suppress competition.[4] A restraint is shown to be inherently suspect when ''past judicial experience and current economic learning have shown [that conduct] to warrant summary condemnation.'' [5] If the plaintiff can sustain that burden, the practice will be condemned unless the defendant can articulate a valid justification for the restriction.[6] A legitimate justification must be ''cognizable'' in the sense that the benefits that the defendant proposes from the restraint must be consistent with the goals of the antitrust laws.[7] A justification, to be legitimate, must also be plausible in the sense that the defendant can ''articulate the specific link between the challenged restraint and the purported justification to merit a more searching inquiry into whether the restraint may advance procompetitive goals, even though it facially appears of the type likely to suppress competition.'' [8] Once the defendant has overcome the presumption of the anticompetitive effect of the inherently suspect restraint by asserting legitimate procompetitive justifications for the restriction, then a more in-depth analysis of the specific effects of the restraint is necessary.[9]

B. A Restriction on Price Advertising in the Funeral Industry Is Inherently Suspect

In *CDA,* the Commission challenged a set of restrictions imposed by the California Dental Association. One of the restrictions allowed the advertising of price discounts only where specified additional information was presented in the advertisement, purportedly needed to ensure that the price advertisement was strictly accurate, and another restriction was a flat restriction on the advertisement of quality claims by dentists.[10] The price advertising restriction was challenged as being so burdensome as to be, in effect, a ban on the advertisement of price discounts. The Association defended the restrictions as necessary to avoid false or misleading advertising, but the Commission and the Ninth Circuit held that the likely anticompetitive effects of the restrictions were clear, and that the Association therefore had, and did not sustain, the burden of establishing procompetitive benefits. The Supreme Court reversed, holding that the competitive effect of the restriction needed to be evaluated in light of the professional context in which it occurred, including the articulated justifications for the restriction.[11] The

[2] *California Dental Assoc.* v. *Federal Trade Comm.,* 526 U.S. 756, 779 (1999) (''CDA''); *see also Chicago Board of Trade* v. *United States,* 246 U.S. 231, 238 (1918) (''The true test of legality is whether the restraint imposed is such as merely regulates and perhaps promotes competition or whether it is such as may suppress or even destroy competition.'').

[3] 2003 WL 21770765 (FTC), slip op. at 29–35 (''PolyGram Holdings''). The *PolyGram Holdings* framework is not, of course, the only means of establishing a violation of the antitrust laws, which may also be accomplished by a showing of market power and a restraint likely to harm competition, or by actual competitive effects. *See PolyGram Holdings,* slip op. at 29 n.37; *Schering-Plough Corp.,* Dkt No. 9297, slip op. at 14–15 (FTC Dec. 8, 2003).

[4] *Id.* at 29; *see also Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.,* 441 U.S. 1, 19–20 (1979) (In characterizing conduct under the Sherman Act, the question is whether ''the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output, * * * or instead one designed to 'increase economic efficiency and render markets more, rather than less, competitive.' '' (quoting *United States* v. *United States Gypsum Co.,* 438 U.S. 422, 441 n. 16 (1978))).

[5] *PolyGram Holdings,* slip op. at 29.

[6] *Id.*

[7] *Id.* at 30–31.

[8] *Id.* at 31–32.

[9] *Id.* at 33, fn. 44.

[10] The restriction on price-related advertisement in *CDA* required that any such advertisement ''fully and specifically'' disclose ''all variables and other relevant factors.'' The restriction also prohibited the use of qualitative phrases relating to the cost of dental services like ''lowest prices.'' Finally, the restriction required that any comparative phrases like ''low prices'' must be based on verifiable data, and the burden of showing the accuracy of those statements is on the dentist. *CDA,* 526 U.S. at 760, fn. 1.

[11] *See CDA,* 526 U.S. at 771–773 (''The restrictions on both discount and nondiscount advertising are, at least on their face, designed to avoid false or deceptive advertising in a market characterized by striking disparities between the

Court, in holding that the Court of Appeals had prematurely shifted the burden to the defendant, focused in particular on two facts: (1) The restriction at issue was ''very far from a total ban on price discount advertising,'' and (2) since ''the particular restrictions'' at issue on their face were aimed at deceptive advertising, they might have the effect of promoting competition by ''reducing the occurrence of unverifiable and misleading across-the-board discount advertising.'' [12]

The current restriction of the Board is inherently suspect.[13] The regulation is the type of restriction that has been found inherently suspect by the Commission in the context of the optometry profession,[14] and is well understood in the economic literature as having anticompetitive effects in the context of professional services.[15] Studies show that advertising restrictions harm competition in the market for funeral services.[16] The importance of price information to funeral service consumers, especially when they receive that information early in the process, is a well-accepted fact of the industry.[17]

Thus, restrictions on price advertising in the funeral industry are likely to suppress competition and will be condemned in the absence of a legitimate efficiency justification.

C. The Order Permits Reasonable Regulation of Advertising

In *CDA,* the Supreme Court concluded that, before the type of restrictions at issue there could be condemned as anticompetitive, a more searching analysis was required. *See* 526 U.S. at 779–81. Several distinctions between the rule of the Board and the rules at issue in CDA are instructive, and further support the conclusion that there is reason to believe a violation of the FTC Act has occurred:

- Unlike in *CDA,* the restriction at issue here was a total ban on price discount advertising in the relevant market (that for preneed funeral services).
- Whereas in *CDA* the restrictions on their face purported to be aimed at limiting false or misleading advertising, here the fact that the restriction was imposed only on the sale of preneed services (where price competition is most likely to be effective), and was not imposed on at-need services (where, by all accounts, the consumer is most vulnerable), suggests that the regulation restricts price competition rather than eliminates deception.
- In *CDA,* there was a concern that price advertising that provided less than complete information regarding prices would allow dentists to create advertisements that would give the appearance that prices were lower when in fact they were not. This problem arose from the difficulty consumers might have in obtaining price information in the market for dental services.[18] Here, however, each funeral director is required by the FTC's funeral rule to disclose all price information to any consumer who might inquire about those services, including the prices of all products and services not subject to the discount.[19]
- Finally, in *CDA,* the respondent advanced the prevention of false and misleading claims as a justification for general restrictions on advertising. Here, there is a separate regulation that relates to the prevention of false and misleading claims.[20]

IV. Opportunity for Modification of the Order

The Board may seek to modify the proposed Order to permit it to promulgate and enforce rules that the proposed Order prohibits if it can demonstrate that the ''state action'' defense would shield its conduct from liability. The state action defense stems from *Parker* v. *Brown*.[21] In *Parker,* the Supreme Court held that Congress had not expressed any intent to apply the Sherman Act to anticompetitive acts of the states. Since *Parker,* the focus of courts evaluating assertions of the state action defense has been on whether the alleged actions were, in fact, acts of the state.[22] When the courts have determined that the alleged anticompetitive acts were acts of the state as sovereign, the state action defense protects those acts.[23] When the courts have determined that the allegedly anticompetitive acts were committed by subordinate agents of state governments, rather than the state itself, the state action defense could still apply if the acts were ''pursuant to a state policy to displace competition with regulation or monopoly public service.'' [24] Finally, when the allegedly anticompetitive act was committed by a private party, the state action defense can only apply if that action was pursuant to a clearly articulated state policy and the actions of the private party were ''actively supervised by the state.'' [25]

information available to the professional and the patient.'').

[12] *Id.* at 773–774.

[13] In *CDA,* the advertising restraint could not be condemned because the FTC had not provided sufficient evidence to show ''why the presumption of likely anticompetitive effects that applies in non-professional markets also applied in the professional setting'' at issue there. *PolyGram Holdings,* slip op. at 33, n. 44.

[14] *See Massachusetts Board of Registration in Optometry,* 110 FTC 549, 606–607 (1988) (''*Mass. Board*'') (''By preventing optometrists from informing consumers that discounts are available, respondent eliminates a form of price competition.''); *see also PolyGram Holdings,* slip op. at 38–39, fn. 52 (citing economic literature).

[15] *See PolyGram Holdings,* slip op. at 38–39, fn. 52.

[16] *See, e.g., Funeral Industry Practices Mandatory Review 16 CFR Part 453: Final Staff Report to the FTC with Proposed Amended Trade Regulation Rule* 64–65 (1990) (''1990 FTC Staff Report'').

[17] *See, e.g.,* Wirthlin Worldwide, *Executive Summary of the Funeral and Memorial Information Counsel Study of American Attitudes Toward Ritualization and Memorialization 3* (January 2000), available at *http://www.cremationassociation.org/docs/attitude.pdf* (''Wirthlin Survey'') (Cost is one of the top factors influencing funeral home selection); *Id.* at 4 (Most often mentioned change recommended by consumers in funeral industry is to ''see costs kept down.'').

[18] *Id.* at 771–776.

[19] 16 CFR 453.2 (1994).

[20] The regulation at issue was the ''Solicitation'' provision in the Part of the preneed regulations entitled ''Sale of Preneed Plans.'' The Board has a separate set of regulations relating to false advertising generally that does not prohibit price and discount advertising, as long as the representations in the advertisement are not untrue, deceptive, or misleading. *See* 18 Va. Admin. Code section 65–20–500(3) (West 2003).

[21] 317 U.S. 341 (1943) (''Parker'').

[22] *FTC* v. *Ticor Title Insurance Co.,* 504 U.S. 621, 636 (1992) (''*Ticor*'') (The test under state action is ''directed at ensuring that particular anticompetitive mechanisms operate because of a deliberate and intended state policy.'').

[23] *Hoover* v. *Ronwin,* 466 U.S. 558 (1984) (''Hoover'') (action of state supreme court regulating entry into the legal profession is state action exempt from liability under the Sherman Act).

[24] *Town of Hallie* v. *City of Eau Claire,* 471 U.S. 34, 39 (1984) (''*Hallie*'') (Municipality is not the state, but is exempt from liability for anticompetitive actions that were pursuant to a state policy to displace competition, when the conduct was a foreseeable result of the policy), quoting *City of Lafayette* v. *Louisiana Power & Light Co.,* 435 U.S. 389, 413 (1978) (plurality opinion); *Southern Motor Carriers Rate Conference Inc.* v. *U.S.,* 471 U.S. 48, 57 (1984) (''*Southern Motor Carriers*'').

[25] *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.,* 445 U.S. 97, 105 (1980) (''*Midcal*''). The ''active supervision'' test requires that ''the State has established sufficient independent judgment and control so that the details of the [restraint] have been established as a product of deliberate state intervention, not simply by agreement among private parties.'' *Ticor Title Ins. Co.,* 504 U.S. at 634–35. The Supreme Court has held that municipalities, unlike private parties, are not subject to the active supervision requirement and are protected by the state action doctrine if they are acting pursuant to a clearly articulated state policy. *Town of Hallie,* 471 U.S. at 46–7. The Court indicated in dicta that ''it is likely that active state supervision would also not be required'' when the relevant actor is a ''state agency,'' but declined to resolve the issue. *Id.* at 46 n. 10. Thus, the role of active supervision for the myriad varieties of governmental and quasi-governmental entities, including state regulatory boards, remains unclear. *See* FTC, Office of Policy Planning, Report of the State Action Task Force 15–19, 37–40, 55–56 (Sept. 2003) (''2003 FTC Staff Report''). Because the

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The clear articulation requirement ensures that, if a State is to displace national competition norms, it must replace them with specific state regulatory standards—a State may not simply authorize private parties to disregard federal laws,[26] but must genuinely substitute an alternative state policy.[27]

Because of federalism concerns at the heart of the state action doctrine, the policy to displace competition must be articulated by an entity that can be identified as the state rather than a subordinate agency of the state.[28] Here, it is clear that the Board is not the state.[29] Therefore, the Board, to modify the proposed Order, must show that its conduct would be pursuant to a clearly articulated policy by the state. An agency or subdivision of the state, like the Board here, will be protected by the doctrine only where the conduct is both legally authorized by the state and that conduct is pursuant to an ''authority to suppress competition.'' [30] With respect to the question of legal authority to act, an agency or municipality satisfies that requirement for the purposes of the state action defense if it can show that it has the authority to engage in that conduct when it does so in the substantively and procedurally correct manner, whether or not the agency actually did engage in the conduct in the substantively and procedurally correct manner in pursuing its allegedly anticompetitive conduct.[31]

Whether an articulated policy by the state is pursuant to an ''authority to suppress competition'' depends on the form of the statement of the state policy.[32] When the state has replaced some dimension of competition with a regulatory structure and gives an agency the discretion to determine how to implement that structure, as in *Southern Motor Carriers,* no more detail than a clear intent to displace competition is required.[33] When the state does not displace competition with a regulatory structure, but simply gives some entity the authority to displace competition, as in *Omni* or *Hallie,* the question is whether the ''suppression of competition is the 'foreseeable result' of what the statute authorizes.'' [34] At present, the Board cannot demonstrate clear articulation under Virginia statutes by either means.

First, it does not appear, from the current statute granting the Board the authority to act, that the state intended that there be a broad displacement of price competition with regulation in the market for preneed funeral services.[35] Unlike the case of Mississippi in Southern Motor Carriers, the Virginia General Assembly did not single out price determination and assign responsibility for that determination to the agency rather than the market. Instead, the legislature was silent on how prices and price-related advertising were to be determined in the funeral services market, aside from emphasizing that ''general advertising and preneed solicitation, other than in-person communication, shall be allowed.'' [36]

Therefore, as in *Omni,* the question will be whether the type of anticompetitive regulation at issue is foreseeable from the Commonwealth's grant of authority to the Board. Unlike either *Hallie* or *Omni,* the regulation is not a foreseeable consequence of the Board's existing grant of authority. Instead, the relationship of the Board's regulation to its grant of authority—to ''establish standards of service and practice for the funeral service profession''—''is one of precise neutrality.'' [37] Further, a review of Virginia's overall statutory scheme demonstrates that this type of restriction is not foreseeable. First, the General Assembly, in passing the statutory scheme, showed no indication of a state policy to restrict price competition or advertising. Second, the Virginia statute itself prohibited in-person solicitation relating to preneed services, but made it clear that ''general advertising and preneed solicitation, other than in-person communication, shall be allowed.'' Finally, the 1989 Act did not change the Virginia statutory requirement that an itemized statement and general price list of funeral expenses be furnished to consumers, which is a similar requirement to that prescribed by the FTC Funeral Rule.[38]

Board's policy lacks clear articulation, it is unnecessary to resolve this issue here. The lack of clear articulation also renders unnecessary any analysis of possible preemption of the state law by federal antitrust law. *See Freedom Holdings, Inc.* v. *Spitzer,* 357 F.3d 205, 222–24 (2d Cir. 2004).

[26] *Parker,* 317 U.S. at 351; *see generally State Action Task Force Report* at 8, 25–26.

[27] *See New York* v. *United States,* 505 U.S. 144, 168–69 (1992); *see also Ticor,* 504 U.S. at 636 (State Action ensures that ''particular anticompetitive mechanisms operate because of a deliberate and intended state policy.'').

[28] *Southern Motor Carriers,* 471 U.S. at 62–63 (Public service commissions could not establish the clearly articulated policy of the state to displace competition needed to invoke the doctrine.).

[29] *See South Carolina State Board of Dentistry,* Dkt No. 9311, slip op. at 16–19 (FTC July 30, 2004) (South Carolina board regulating dentists and dental hygienists and composed largely of dentists is not the state for the purposes of the state action defense and can only claim the protection of the defense if it was acting pursuant to a clearly articulated and affirmatively stated state policy to displace competition found in state statutes); *Mass. Board,* 110 FTC at 612–613 (Massachusetts board regulating optometrists and composed largely of optometrists is not the state for the purposes of the state action defense and can only claim the protection of the defense if it was acting pursuant to a clearly articulated and affirmatively stated state policy to displace competition found in state statutes); *FTC* v. *Monahan,* 832 F.2d 688, 689 (1st Cir. 1987) (Massachusetts Board of Registration in Pharmacy, which was composed of pharmacists and regulated pharmacists was a ''subordinate governmental unit'' which could only claim the state action defense if its actions were pursuant to clearly articulated and affirmatively expressed state policy to displace competition); *see also Hoover,* 466 U.S. at 568 (''Closer analysis is required when the activity at issue is not directly that of the legislature or supreme court, but is carried out by others pursuant to state authorizations.''); *Southern Motor Carriers,* 471 U.S. at 62–63 (Public service commissions could not establish the clearly articulated policy of the state needed to invoke the doctrine.).

[30] *City of Columbia* v. *Omni Outdoor Advertising, Inc.,* 499 U.S. 365, 372–373 (1991) (''Omni'').

[31] *Id.* (''[N]o more is needed to establish for *Parker* purposes, the city's authority to regulate than its unquestioned zoning power over the size, location, and spacing of billboards.''). Here, the Board's authority to ''establish standards of service and practice for the funeral service profession'' in Virginia, Va. Code Ann. section 54.1–2803(1) (Michie 2003) (''VC 54.1–2803(1)''), presumably constitutes adequate legal authority to promulgate the regulation at issue sufficient to satisfy the first leg of the test in *Omni. See* 499 U.S. at 370–373.

[32] *Omni,* 499 U.S. at 372.

[33] *See Southern Motor Carriers,* 471 U.S. at 63–64 (Mississippi state statute requiring the public service commission to prescribe just and reasonable rates is a sufficiently clear expression of intent to displace competition for the determination of prices to allow the commission to encourage private firms to engage in collective rate-making and to allow adequately supervised private firms to do so.).

[34] *Omni,* 499 U.S. at 373, *quoting Hallie,* 471 U.S. at 42.

[35] The Board's legal authority to promulgate restrictions on advertising stems from VC 54.1–2803(1), which gives the Board the authority to ''establish standards of service and practice for the funeral service profession in Virginia.''

[36] *See* Va. Code Ann. section 54.1–2806(5) (Michie 2003). By way of contrast to its treatment of advertising and price competition in the market for preneed services, the General Assembly did displace competition with regulation by the Board regarding certain other aspects of the preneed funeral transaction. *See* Va. Code Ann. section 54.1–2803(9) (Michie 2003) (''VC 54.1–2803(9)''). A close look at the regime established by the statute indicates that Virginia intended that certain types of competition be displaced by regulations: (1) the state intended that the forms for preneed contracts be specified by the Board, *Id.; see also* Va. Code Ann. section 54.1–2820 (Michie 2003); (2) the state intended that the disclosures made to consumers purchasing preneed services be established by regulations, VC 54.1–2803(9); and (3) the state intended that ''reasonable bonds'' be required to ensure performance of the preneed contract at-need. *Id.*

[37] *See Community Communications Co., Inc.* v. *City of Boulder,* 455 U.S. 40, 54–56 (1982) (holding that ''the general grant of power to enact ordinances'' does not satisfy the clear articulation requirement.).

[38] Virginia adopted the Rule's requirements of disclosure, including price disclosure by statute, referencing the FTC Funeral Rule explicitly. *See* Va. Code Ann. section 54.1–2812 (Michie 2003). Under Virginia statute the Board may suspend or revoke the license of, or otherwise punish, a licensee for ''[v]iolating or failing to comply with Federal Trade Commission rules regulating funeral industry practices.'' *See* Va. Code Ann. section 54.1–

That section of the Virginia statute requires that ''[a]ll regulations promulgated herewith shall promote the purposes of this section.'' Because the purpose of the Funeral Rule is to increase the availability of information to consumers to improve price competition,[39] and because this section of the statute expressly incorporates that rule, it appears unlikely that the General Assembly intended to authorize a regulation inhibiting price competition as a foreseeable result of the Board's general authority to regulate the funeral industry.[40]

V. Opportunity for Public Comment

The proposed Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreement and comments received, and will decide whether it should withdraw from the Agreement or make final the Order contained in the Agreement.

By accepting the proposed Order subject to final approval, the Commission anticipates that the competitive issues described in the proposed Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the proposed Order. It is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–19445 Filed 8–24–04; 8:45 am]

BILLING CODE 6750–01–P

2806(19) (Michie 2003). Virginia is one of 18 states that has adopted at least part of the requirements of the Funeral Rule. AARP, *The Deathcare Industry* 7 (Public Policy Institute, May, 2000).

[39] *See e.g.*, 1990 FTC Staff Report at 12; Comments of AARP on the Commission's Review of the Funeral Rule, 16 CFR Part 453 (September 14, 1999), available at *http://www.ftc.gov/bcp/rulemaking/funeral/comments/*. Comment A–55–AARP Funeral Rule Comments.htm. (''Certainly, one of the intended effects of implementing the Rule was to spur on competition, by making it easier for consumers to make an educated decision.'').

[40] *Indiana Movers Analysis* at 5.

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Sunshine Act Meeting: Meeting of the Trustees and Officers of the Harry S. Truman Scholarship Foundation, September 24, 2004, 11 a.m.–12:30 p.m., U.S. Capitol, Room HC–6

I. Call to order, Welcome, Approval of the Minutes of the Meeting of May 7, 2004;

II. Consideration of election of a Vice-President of the Truman Scholarship Foundation;

III. Adoption of a policy and implementation language for Truman Scholars Accountability;

IV. Discussion and Board Action on Proposed Three Year Trial of a Truman Fellows Program providing for a one-year professional experience in Washington following receipt of a baccalaureate degree and prior to graduate school;

V. Reauthorization of the Public Service Law Conference;

VI. Adoption of a Budget and approval of the Bulletin of Information for the 2004–2005 Year for the Foundation;

VII. Old Business;

VIII. New Business;

IX. Adjournment.

Dated: August 18, 2004.

Louis H. Blair,

Executive Secretary.

[FR Doc. 04–19554 Filed 8–23–04; 1:57 pm]

BILLING CODE 6820–AD–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Continuation of the Rabia Balkhi Hospital (RBH) Physician Training and Support Program in Afghanistan

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of intent to fund a single eligibility award.

SUMMARY: The Office of Global Health Affairs (OGHA) announces the intent to allocate fiscal year (FY) 2004 funds for a grant program for services provided by the International Medical Corps (IMC) that will allow the continuation of the Rabia Balkhi Hospital (RBH) Physician Training and Support Program in Afghanistan. The goal of the project is to reduce the maternal and infant mortality rates in Afghanistan through the training of obstetrician-gynecologists (OB-GYNS) and other health care workers at RBH. Forty percent of deaths among women of childbearing age in Afghanistan are caused by preventable complications related to childbirth, and an estimated one in four children dies before reaching their fifth birthday.

A. Purpose

The project's main objectives include: (1) To improve the capacity of the hospital's staff to practice medicine, (2) to improve the quality of care for RBH patients. These services are expected to dramatically improve patient care and to make a substantial reduction in maternal and infant illness and deaths at the hospital.

The Catalog of Federal Domestic Assistance number for this program is 93.003.

B. Eligible Applicant

Assistance will be provided only to International Medical Corps (IMC).

The IMC is the only organization in Afghanistan qualified to collaborate with the Office of Global Health Affairs. IMC is a global humanitarian nonprofit organization, exceptionally well-qualified, with a vast network of health facilities staffed by a dedicated cadre of health care professionals. In Afghanistan, IMC has established a strong foundation for training activities, and the ongoing provision of primary health care services to men, women, and children throughout the country. IMC supported clinics have treated more than 500,000 men, women, and children in Afghanistan since 2001. No other institution in the country has the capacity and expertise to accomplish this task.

C. Funding

Approximately $685,000 is available in FY 2004 to fund this award. It is expected that the award will cover costs for the period February 1, 2004 through September 30, 2004. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Brian Trent, Management Operations Officer, Office of Global Health Affairs, Department of Health and Human Services, 5600 Fishers Lane, Room 18–101, Rockville, MD 20857, Telephone: 301–443–4560.

For technical questions about this program, contact: Amar Bhat, Office of Global Health Affairs, Department of Health and Human Services, 5600 Fishers Lane, Room 18–101, Rockville, MD 20857, Telephone: 301–443–1410, E-mail: *abhat@osophs.dhhs.gov.*

Dated: August 20, 2004.

RADM Arthur J. Lawrence,

Assistant Surgeon General, Acting Principal Deputy Assistant Secretary for Health, Office of Public Health and Science.

[FR Doc. 04–19409 Filed 8–24–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Funding Opportunity: Request for Applications for Cooperative Agreement To Provide Training Program to Physicians and Other Staff at Rabia Balkhi Women's Hospital in Kabul, Afghanistan

Announcement Type: Initial.

Action: Notice.

Authority: Section 103(a)(1); Section 103(a)(7) of public law 107–327; Public Health Service Act, Section 307.

SUMMARY: The Office of Global Health Affairs (OGHA) announces that an estimated $2.2 million in fiscal year (FY) 2004 funds are available for one (1) cooperative agreement to provide continuing education and refresher training to physicians and other staff at Rabia Balkhi Women's Hospital (RBH) in Kabul, Afghanistan. This effort is a joint undertaking by the U.S. Department of Health and Human Services (HHS) and the Afghanistan Ministry of Health (MOH). The objective of this project is to improve the quality of care at RBH through the provision of continuing education and refresher training and related services to improve the knowledge base and skills of the physicians, nurses, midwives, other health care workers, and support staff at the facility. Award recipient will also conduct a comprehensive evaluation of conditions and elements necessary for the eventual implementation of an OB/GYN residency training program in Afghanistan. OGHA anticipates HHS scientific and programmatic involvement in the development and administration of the training program. The project will be approved initially for a three-year period. It is estimated that approximately $2.2 million (including indirect costs) will be available in the first year. Funding for the cooperative agreement in subsequent years is contingent upon the availability of funds.

DATES: To receive consideration, the Grants Management Office (GMO) of the Office of Public Health and Science (OPHS) within HHS must receive applications by no later than September 15, 2004. Additionally, a letter of intent to apply is required (*See* Section IV) no later than September 1, 2004.

ADDRESSES: Application kits may be requested from, and applications submitted to: OPHS Grants Management Office, 1101 Wootton Parkway, 5th Floor, Rockville, MD 20852.

SUPPLEMENTARY INFORMATION: This Cooperative Agreement is governed by the Afghanistan Freedom Support Act (Pub. L. 107–327, Section 103(a)(1) and Section 103(a)(7)), and the Public Health Service Act (Section 307) and will be administered by the OGHA, HHS.

OGHA provides policy and staffing support to the Secretary and other HHS leaders in the area of global health, and provides policy advice, leadership and coordination of international health matters across HHS, including leadership on major crosscutting global health initiatives and the Department's relationships with multilateral organizations.

Under this continuing education and logistical support cooperative agreement, HHS, in coordination with the Afghanistan MOH, will support and guide award recipient's activities by working with the award recipient in an advisory role throughout the development and implementation of activities. In addition, HHS will participate actively in the evaluation of the program.

Obligations of HHS

1. Assurance of the services of appropriately experienced OGHA and other HHS personnel to participate in the planning, development, implementation, and evaluation of all phases of this activity;

2. Participation in periodic meetings and/or communications with the award recipient to review mutually agreed-upon goals and objectives and to assess program development and implementation progress and, when indicated, interval evaluation;

3. Assistance in establishing and maintaining U.S. Government, Afghanistan MOH, and non-governmental organizations (NGOs) contacts and agreements necessary to carry out the project.

I. Funding Opportunity Description

This announcement seeks proposals from appropriately qualified public and private not for profit entities to provide clinical, administrative, and ancillary staff continuing education and refresher training to Afghan healthcare professionals and support staff at RBH. For the purposes of this cooperative agreement, continuing education and refresher training refer to specific training in appropriate Western clinical methodologies and techniques that are identified as critical to the knowledge and skills of attending physicians, residents, midwives, and nurses. ''Residency training'' refers to a sustainable training of physician specialists in obstetrics and gynecology based on accredited Western standards and modified for the Afghan situation. Funds available under this cooperative agreement will improve the quality of care at RBH by providing direct training, clinical as well as didactic, for physicians, current residents, midwives, and nurses. Clinical training will include the demonstration of direct patient care alongside Afghan healthcare providers. As a second priority, other allied health care workers such as laboratorians and pharmacy technicians, hospital administrators including facility and personnel managers, should also benefit from training. Finally, award recipient will conduct a comprehensive evaluation of all necessary conditions and elements related to the implementation of a residency training program in Obstetrics and Gynecology (OB/GYN) in Afghanistan, most likely based in Kabul and possibly involving one or more hospitals, including Rabia Balkhi Hospital. While not included as part of this proposed cooperative agreement, the ultimate goal of HHS is to support the establishment of a sustainable OB/GYN residency training program in Kabul, once conditions are appropriate for doing so. Information and insights gained through this cooperative agreement will inform subsequent programming to develop the residency program.

Background

Afghanistan has one of the highest maternal mortality rates (MMR) in the world with a rate of 1,600 maternal deaths per 100,000 live births. In Badakshan Province, the MMR is 6,500, the highest maternal mortality rate ever reported globally. Preventable complications related to childbirth cause more than 85 percent of deaths among women of childbearing age in Afghanistan. An estimated one in four children dies before reaching their fifth birthday.

The Rabia Balkhi Women's Hospital (RBH) in Kabul, Afghanistan, is the largest full-service women's hospital in the country. The hospital treats more than 36,000 patients each year and delivers 14,600 babies per year, on an average, 40 babies a day. Other care services provided at RBH include gynecology, surgery, dermatology, and internal medicine.

RBH, as well as most of health care clinics and hospitals in Afghanistan, is struggling with basic facility and human resource challenges that exceed those experienced in most other developing countries. Healthcare professionals and support staff at RBH are working to provide quality services in an environment left neglected during years of political upheaval and oppression. As a result, fundamental outpatient and in-patient services needed to provide timely and accurate assessment and treatment of patients are frequently absent or in need of major improvement.

The United States, other countries, and NGOs have begun cooperative efforts toward direct assistance and provision of essential health services in Afghanistan. HHS Secretary Tommy G. Thompson signed a Memorandum of Understanding (MOU) with the Afghanistan Minister of Health on October 9, 2002, pledging the support of American citizens to help in these efforts. In early 2003, HHS entered into collaboration with the Afghanistan Ministry of Health to improve the maternal and child health services available within Afghanistan. One of the long-term goals of this HHS-MOH collaboration is to develop an OB/GYN residency training program that is an adaptation of the American OB/GYN residency model.

As a first step, in April 2003, HHS established a clinical knowledge and skills refresher-training program at RBH. The intent of this refresher training has been to update the knowledge and skills of the attending physicians. Currently, HHS and a partner NGO are providing focused, short-term training to the obstetrician-gynecologist attending staff at RBH, to update clinical skills and basic knowledge which are needed to respond to the critical needs of the high-risk patient community accessing care at this facility.

In addition, training has been extended to other critical members of the hospital staff such as residents, nurses, midwives, anesthetists, and pediatricians. The numbers of Afghan healthcare professionals at RBH and thus exposed to training under this award is approximately 148 in the following categories:

- OB/GYN attending physicians—13.
- OB/GYN resident physicians—40.
- Pediatric staff—10.
- Midwife/Nurse staff—60.
- Hospital Administrators—5.
- Pharmacy staff—5.
- Laboratory staff—5.
- Maintenance and housekeeping staff—10.

The trainers have sought to update the knowledge and clinical skills of the existing attending physicians and other healthcare professionals at RBH in the fundamentals of clinical medicine so as to assure that the attending physicians, residents, and staff at RBH possess the core knowledge and skills required to provide the best possible care for mothers and their babies. Since 2003, a rotating faculty consisting of volunteer Western-trained Obstetrician-Gynecologists, Pediatricians, Anesthesiologist/Nurse Anesthetists, Family Practitioners, Certified Nurse-Midwives and Nurse Practitioners, and Hospital Administrators have been teaching the refresher training program. Additionally, HHS consultants and NGO staff have provided specific training related to administration and upkeep of the physical environment of RBH. HHS has determined that these continuing education efforts need to be continued for at least three years.

Purposes of the Cooperative Agreement

The United States Government remains committed to supporting the further development of Afghanistan's health infrastructure. The purpose of the activities supported by this funding is to provide and support formal training for physicians, other healthcare professionals, and ancillary hospital staff at RBH that will improve the quality of care offered at the hospital so that an OB/GYN residency training program modeled after American OB/GYN residency programs can exist in the future. This RFA invites cooperative agreement applications from qualified applicants, or a consortium of applicants, to participate in this endeavor as a critical partner with HHS and Afghanistan MOH in their efforts to improve the quality of care at RBH.

The role of the award recipient of this cooperative agreement will be to provide and support training of the physicians, nurses, midwives and other staff at RBH. The award recipient will design and implement a formal clinical and didactic curriculum that includes modeling of direct patient care for professional staff at RBH. Additionally, the award recipient will provide critical logistical support to project staff and consultants working at RBH on various aspects of the program. Finally, the award recipient will conduct a comprehensive evaluation of all the necessary elements and conditions required for the eventual implementation of an OB/GYN residency training program in Afghanistan.

II. Award Information

The administrative and funding instrument to be used for this program will be the cooperative agreement in which HHS scientific and programmatic involvement with the awardee is anticipated during the performance of the project. Under the cooperative agreement, HHS will support and/or stimulate award recipient activities by working with the award recipients in a partnership role. The award recipient will also be expected to work directly with and in support of HHS' Centers for Disease Control and Prevention (CDC), Health Resources Services Administration (HRSA), the Indian Health Service (IHS); Veterans Administration (VA); the Afghanistan MOH; and other partners.

The project period is up to three years with an initial award of $2.2 million in total costs (including indirect costs). The initial budget period is expected to be 12 months, with subsequent budget periods being 12 months. Continuation of any project from one budget period to the next, and level of funding, is subject to satisfactory performance, availability of funds, and program priorities.

Although this program is provided for in the financial plans of the OGHA, awards pursuant to this RFA are contingent upon the availability of funds for this purpose.

III. Eligibility Information

Applications may be submitted by appropriately qualified not for profit entities or consortia of such entities, including U.S. universities and medical schools, humanitarian and relief organizations, and other NGOs, with offices in the United States and Afghanistan or incorporated and headquartered in the United States with offices in the United States and Afghanistan. For-profit entities may participate but only as a partner organization in a consortium. Minimally, applicants must meet Afghanistan MOH requirements for registration and participation in healthcare activities in the country. Since it is unlikely that all of the required capabilities will be located within one institution, the successful applicant will likely be multi-institutional, or a consortium that draws from multiple groups in the United States and Afghanistan. OGHA can provide information about possible partners. Cost sharing or matching is not required.

Organizations or consortia of organizations that have collective experience in the following areas are encouraged to apply:

- Training of physicians and other health care workers in resource-poor settings.

- Training of ancillary hospital staff in resource-poor settings.
- Management of an accredited OB/GYN residency training program.
- Hospital accreditation.
- Assessment and evaluation of hospitals and critical public health infrastructure.
- Supporting the development of quality-assurance programs for acute care sites in resource-poor settings.
- Provision of logistical support for project staff including travel, on ground transportation and communication systems including translation, security, and room and board.

IV. Application and Submission Information

1. Applications may be requested in one of three ways: (1) Telephone: (301)–443–1410; (2) e-mail: *abhat@osophs.dhhs.gov;* and (3) Mail: Project Officer Dr. Amar Bhat; Parklawn Building, Room 18C–17; Rockville, MD 20857.

2. Applicants are requested to use Application Form PHS–5161–1 (revised July 2000), enclosed in your application packet. Instructions for filling out PHS–5161–1 are included in the application packet. This form is also available in Adobe Acrobat format at the following website *http://www.cdc.gov/od/pgo/forminfo.htm.* Many different programs funded through the Public Health Service (PHS) use this generic form. Some parts of it are not required; other sections need to be filled out in a fashion specific to the program. Applications should be submitted to Ms. Karen Campbell, Director, Office of Public Health and Science (OPHS) Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852.

Notification of intent to apply is required and can be made in one of three ways: (1) Telephone: (301)–443–1410; (2) e-mail: *abhat@osophs.dhhs.gov;* and (3) Mail: Project Officer Dr. Amar Bhat; Parklawn Building, Room 18C–17; Rockville, MD 20857. The letter of intent must be received by 4:30 PM on the date specified in the date section. For questions specific to project objectives, the nature of the training program, or the required letter of intent contact Dr. Amar Bhat at *abhat@osophs.dhhs.gov* or by phone at 301–443–1410.

For cooperative agreements policy, budgetary, and business questions contact Grants Management Specialist Mr. Eric West at *ewest@osophs.dhhs.gov* or by phone at 301–594–0758.

A separate budget page is required for each budget year requested. For example, if the applicant organization requests three years of cooperative agreement support, a line item budget (SF 424A) with coinciding justification to support each of the budget years must be submitted with the proposal. These forms will represent the full project period of Federal assistance requested. This will also provide budget information needed for the subsequent year's Summary Progress Report. Proposals submitted without a budget and justification for each budget year requested in the application may not be favorably considered for funding. Specific instructions for submitting a detailed budget for this application will be included in the application packet. If additional information and/or clarification are required, please contact the Grants Management Specialist identified in Section VII of this announcement.

3. Applicants are required to submit an original ink-signed and dated application and 2 photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8½″ x 11″ white paper, using at least a 12 point font and contain 1″ margins all around. The Project Summary and Project Narrative must not exceed a total of 25 double-spaced pages, excluding the appendices. The original and each copy must be stapled and/or otherwise securely bound.

4. A project abstract submitted on 3.5 inch floppy disk and/or CD–ROM must accompany all cooperative agreement applications. The abstract must be single-spaced, typed, and must not exceed two pages. Margins should be 12 inches at the top and 1 inch at the bottom and both sides; and typeset must be no smaller than 12 point font and not reduced. Reviewers and staff will refer frequently to the information contained in the abstract, and therefore it should contain substantive information about the proposed projects in summary form. A list of suggested keywords and a format sheet for your use in preparing the abstract will be included in the application packet.

A project narrative must accompany all cooperative agreement applications. In addition to the instructions provided in PHS 5161–1 for project narrative, the specific guidelines for the project narrative are provided in the program guidelines. Format requirements are the same as for the project abstract section; margins should be 12 inch at the top and 1 inch at the bottom and both sides; and typeset must be no smaller than 12 point font and not reduced. Biographical sketches should be either typed on the appropriate form or plain paper and should not exceed two pages, with publications listed being limited only to those that are directly relevant to this project.

5. E.O. 12372 does not apply to this application.

6. Funding restrictions do not apply to this application beyond the limitations described below.

The amount of financial support (direct and indirect costs) that an applicant is requesting from the Federal granting agency for the first year is to be entered on the Face Sheet of Application Form PHS 5161–1, Line 15a. Each application should include a request for funds for electronic mail capability unless access by Internet is already available. The amount of financial support (direct and indirect costs) entered on the SF 424 is the amount an applicant is requesting from the federal granting agency for the first project year. Projected amounts for future budget periods should be entered on SF 424A, Section E. Please note that if indirect costs are requested, the applicant must submit a copy of the latest negotiated rate agreement. The indirect costs rate refers to the Other Sponsored Program/Activities rate and to neither the research rate, nor the education/training program rate. Those applicants without an established indirect cost rate for other sponsored programs will be held at 15 percent of total direct costs, except, in cases where there is no established rate, applicants may only request 10 percent of salaries and wages. However, if an applicant's established rate for other sponsored programs exceeds 15 percent, but would be advantageous to the U.S. Government, the OGHA/HHS may honor that indirect rate cost.

To receive consideration, the OPHS Grants Management Office must receive applications by the deadline listed in the **DATES** section of this announcement. Applications will be considered as meeting the deadline if they are actually received by the Grants Management Office by 4:30 p.m. on the application due date; for this project, postmark by the deadline date will not suffice. Hand-delivered applications must be received in the OPHS Grants Management Office no later than 4:30 p.m. on the application due date. Applications that do not meet the deadline will not be accepted for review. Applications sent via facsimile or by electronic mail will not be accepted for review. All applications must be submitted to OPHS at the following address: Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Receipt of applications will not be acknowledged.

A copy of the legislation governing this program and additional information that could be helpful will be included as part of the application kit. Applicants should use the legislation and other information included in this announcement to guide them in developing their applications.

Program Requirements/Application Content

This notice seeks applications for the development, implementation and evaluation of a broad-based training program at RBH in Kabul, Afghanistan. Successful applications will focus on the development, implementation, and evaluation of a training program and curriculum for hospital-based healthcare professionals and ancillary staff in a resource-poor developing country. Successful applications will include a detailed plan for a comprehensive evaluation of the various conditions and elements required to implement an OB/GYN residency training program in Afghanistan. In addition, the application will include in-country logistical support for all project personnel such as faculty and trainers. Further, the successful applicants will document their proven experience and success in previous, similar projects located in developing countries.

The application will include the following elements:

1. Refresher Training and Continuing Education Program

Comprehensive topic areas for curriculum development will be identified in cooperation with HHS and the Afghanistan MOH but minimally will include physician, current resident, midwife and nurse refresher training and continuing education to update knowledge and skills and medical English classes for the professional staff. As a second priority, other allied health care workers such as laboratorians and pharmacy technicians, hospital administrators including facility and personnel managers, should also benefit from training. Curricula will be subject to review and approval by HHS and the Afghanistan MOH.

At the request of the MOH or other recognized partners, participants associated with other training programs in Afghanistan may also be included as space and resources permit in the RBH continuing education programs. Additionally, the award recipient and the team assembled by the award recipient will be expected to collaborate with HHS staff (in Kabul and the United States) involved in the design, implementation, and maintenance of quality assurance and surveillance activities such as the introduction and implementation of a record-keeping and informatics system at RBH. Any collaboration will be in keeping with overall intent of this cooperative agreement.

Team Composition: Award recipient will recruit and manage a team of medically trained professionals responsible for implementation of the curriculum as described above.

The award recipient should provide six Western-trained health-care professionals to work at RBH throughout the year. The award recipient will be responsible for recruiting and hiring the team members. The team should ideally consist of six team members at all times, except during brief transitional periods. At a minimum, and only during periods of transition, at least one medical doctor, with other appropriate team members, will be in country continuously. The team members should serve at least three months during a single tour in country to become acquainted with the hospital and staff and provide continuity. The team members will be licensed to practice and board-certified (if applicable for the profession) in their field of specialty in their country of primary residence.

The team should consist of at least two (2) OB/GYNs, one (1) certified nurse midwife (CNM), one (1) pediatrician or pediatric nurse practitioner, and one (1) hospital administrator. The remaining professional can be of a category appropriate to specific training needs. Consistent with the purposes of this cooperative agreement, qualified persons who speak Pashtun and Dari and are familiar with Afghan culture should be given due consideration as the medically-trained team is assembled. Composition of the team and qualifications of team members are subject to approval by OGHA/HHS. The team described above should be supplemented, as needed, with qualified persons to create a team capable of providing the didactic and clinical teaching of the curriculum described in Section 1 (Curriculum Development). Team members will provide critical hands-on training to hospital staff, including attending and resident physicians; nurses; midwives; pharmacists, laboratory technicians, administrative staff, maintenance staff, and others.

2. Logistical Support

Given the security considerations of the Afghan environment, to successfully carry out the objectives of this cooperative agreement, certain logistical needs of project staff will need to be supported by the grantee. These include the following:

a. One-to-three-day orientation of Western-trained team members to the Afghanistan project in a mutually agreeable location, on a periodic basis as needed, in collaboration with staff at HHS. This will include developing agendas, acquiring venue, preparation of materials, and travel and hotel accommodations for the participants.

b. All aspects of international travel to and from Afghanistan, including passport and visa assistance, travel per diem, hotel accommodations in transit, insurance, *etc.*

c. A secure (guarded), walled, furnished housing compound with indoor plumbing and provision for electrical services provided by generator, with sufficient lodging and beds for team members (no more than two individuals per room), and accommodations for female as well as male team members;

d. A backup water filtration system that is operational 24 hours a day/seven days a week;

e. Provision of incidentals, including but not necessarily limited to currency assistance, assistance with local government regulations, such as work permits, visa extensions and United Nations/commercial transportation services.

f. Provision of dedicated, dependable, safe transportation, with operating seat belts, maintenance, repair and operating considerations. This must include at least one vehicle comparable to a four-wheel drive Sports Utility Vehicle. At least one English-speaking driver must be on-call 24 hours per day.

g. Provision of a secure environment 24 hours per day per applicable and commonly accepted international standards for Afghanistan, including provision of VHF handheld radios and reliable second check system that ensures all team members are accounted for at least twice a day;

h. Provision of language assistance and translator/interpreter services during normal business hours and on call 24 hours a day;

i. Provision of airport facilitator services in Kabul to meet project staff/consultants and assist with customs clearance for personal effects and program commodities;

j. Provision of commodity procurement services to include commodity pricing, procurement, receipt, transport, storage, inventory and accountability. The volume and frequency of procurement requests will be intermittent over the course of the project. Funds for commodity

procurement will be provided by respective sources such as HHS (OS/OGHA, Indian Health Service, HRSA, Centers for Disease Control and Prevention), the Department of Veterans Affairs, and others as needed. The nature of the commodities may include, but are not limited to, the following: desktop and laptop computers, printers, copy and fax machines, two-way radios, personnel protection devices, medical equipment, text books, educational and other printed materials, and training materials. At the request of the respective commodity funding source, arrange for the transfer of property from the U.S. Government-based funding source to other non-U.S. Government partners such as the MOH, an NGO or a private voluntary organization (PVO);

k. Provision of office support: Office space, desk and access to related office-support equipment, telephone, photo-copier, fax, desktop computer and software such as MS Office Pro, internet access, email account, domestic and international postage/mail/express courier service.

3. Residency Training Program

3.1 Feasibility Assessment of OB/GYN Residency Training Program. A long-term goal of this HHS-MOH collaboration is to develop an OB/GYN residency training program that is an adaptation of the American OB/GYN residency model. Working with HHS and other partners, award recipient will conduct a comprehensive evaluation of all the various components that would be required to implement an OB/GYN residency training program in Afghanistan. Award recipient will provide the final feasibility assessment to HHS within four months of award notification and delivery. At a minimum, the evaluation will consist of the following elements:

a. Assessment of RBH and other potential residency training institutions in Kabul (to be identified by HHS at a later date): Award recipient will evaluate the institutional capacity and ability of RBH and other selected hospitals to support an OB/GYN residency training program based on the Accreditation Council for Graduate Medical Education (ACGME) guidelines. Award recipient will evaluate the current systems of hospital management, personnel management, performance evaluation, and overall day-to-day operations of the hospitals. Award recipient will evaluate the current knowledge, skills, and abilities of the attending OB/GYN physicians and OB/GYN residents and make specific recommendations regarding their role, or propose an alternative source of qualified faculty for an OB/GYN residency training program based on ACGME guidelines.

b. Assessment of the medical curriculum that HHS provided to the Afghanistan MOH: A draft curriculum of the medical education required for an OB/GYN residency training program, based on the ACGME guidelines and existing medical education in Afghanistan was developed by HHS and its partners. The draft curriculum is currently under review by the Afghanistan MOH. The award recipient will work closely with HHS and the MOH to assess the feasibility of implementing an OB/GYN residency training program based on this medical curriculum provided to the Afghanistan MOH. The award recipient will also be responsible for negotiating a final version of the medical curriculum with the Afghan MOH, the Afghan Ministry of Higher Education (MOHE), and HHS.

c. Assessment of Afghan MOH and Afghan MOHE: Award recipient will evaluate the institutional capacity of the Afghan MOH and the Afghan MOHE to support an OB/GYN residency training program based on ACGME guidelines, and will provide specific recommendations to address any substantial perceived deficiencies.

d. Assessment of current OB/GYN residency training programs in RBH and at least one other hospital in Kabul HHS will identify: The award recipient will perform an evaluation of the current OB/GYN residency training programs in Afghanistan. The award recipient will evaluate the current recruitment and performance evaluation systems used for OB/GYN residents. The award recipient will document the current OB/GYN residency training requirements and guidelines specified by the Afghan MOH and the Afghan MOHE, and will provide specific recommendations regarding the required changes to these training requirements, if any, that would be needed to successfully implement an OB/GYN residency training program in Afghanistan.

e. Assessment of current training received at medical schools in Afghanistan: The award recipient will document the current medical school curriculum and training requirements mandated by the MOHE for medical school graduates. The award recipient will perform a baseline assessment of the knowledge, skills, and abilities of first year residents, and if warranted provide specific recommendations to address gaps in the basic sciences and the general medical competencies required to succeed in an OB/GYN program based on ACGME guidelines.

3.2 Development of the Residency Training Program: Capability Statement. While this announcement and the first year of funding do not provide for the longer-term development of the proposed residency training program in Kabul,HHS welcomes expression of potential interest by applicants, including description of the proposed team, approach, and budget to undertake this additional major activity, should additional funds become available to incrementally supplement this award in future years. Applications will be evaluated principally in relation to Program Requirements 1, 2 and 3.1, but those with a strong capability statement for the residency training program will receive additional favorable consideration.

Program Evaluation

All applications are required to have an evaluation plan, consistent with the scope of the proposed project and funding level that conforms to the project's stated goals and objectives. The evaluation plan should include both a process evaluation to track the implementation of project activities and an outcome evaluation to measure changes in patient health outcomes and the knowledge and skills of staff that can be attributed to the project. Project funds may support evaluation activities.

In addition to conducting their own evaluations, successful applicants must be prepared to participate in external evaluations supported by HHS and the Afghanistan MOH and conducted by partner HHS agencies and/or NGOs.

In addition to routine communications with HHS, within 30 days following the end of each quarter, award recipient will submit a written quarterly performance report no more than ten pages in length to OGHA/HHS. At a minimum, monthly performance reports will include the following:

- Concise summary of the most significant achievements and problems encountered during the reporting period, *e.g.* number, names, and types of training courses held and number of RBH hospital staff in attendance.
- A comparison of work progress with objectives established for the quarter using the award recipient's implementation schedule, and where such objectives were not met a statement of why they were not met, and a summary of corrective actions to be taken.
- Specific action(s) that the award recipient would like OGHA/HHS and the Afghanistan MOH to undertake to alleviate obstacles to progress.

• Other pertinent information that will permit overview and evaluation of project operations.

• Status of commodities ordered, received, and stored/used.

Within 90 days following the end of the project period a final report containing information and data of interest to the HHS or other partners must be submitted to OGHA/HHS. The specifics as to the format and content of the final report and the summary will be sent to successful applicants. At minimum, the report should contain the following:

• A summary of the major activities supported under the cooperative agreement and the major accomplishments resulting from the training of physicians and other staff at RBH.

• An analysis of the project, based on the challenges described in background section of the RFA performed prior to or during the project period, including a description of the specific objectives stated in the cooperative agreement application and the accomplishments and failures resulting from activities during the cooperative agreement period.

Quarterly performance reports and the final report should be submitted to: Amar Bhat, Ph.D, Parklawn Building, Room 18C–17, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone Number: (301) 443–1410, Fax Number: (301) 443–1397, Email: *abhat@osophs.dhhs.gov.*

V. Application Review Information

Applications will be screened for completeness and for responsiveness to the program guidance. Applicants should pay strict attention to addressing these instructions, as they are the basis upon which their applications will be judged. Those applications judged to be non-responsive or incomplete will be returned to the applicant without review.

An appropriate peer review group specifically convened for this solicitation and in accordance with HHS management policies and procedures for cooperative agreements will evaluate for scientific and technical merit applications that are complete and responsive to the instructions. As part of the initial merit review, all applications will receive a written critique. All applications eligible for consideration will be discussed fully by the ad hoc peer review group and assigned a priority score for funding. Eligible cooperative agreement applications will be assessed according the following criteria:

(1) *Technical Approach (40 points):*

• The applicant's presentation of a sound and practical technical approach for executing the requirements specified in the Program Requirements section of this announcement, with adequate explanation, substantiation and justification for methods for handling the projected needs of the cooperative agreement.

• The successful applicant must demonstrate a clear understanding of the scope of work and objectives of the cooperative agreement, recognition of challenges that may arise in performing the work required, and understanding of the close coordination necessary between the OGHA/HHS, Afghanistan MOH, the U.S. Agency for International Development, and other organizations.

• Applicants must submit a strategic plan that outlines the initial (proposed) schedule of activities and expected products of the work with benchmarks at months four, six, 12, 18, 24, and 36. The strategic plan should specifically address the development of the curriculum and implementation of the training program for each category of hospital personnel; the proposed logistical support; and the activities related to initial assessment toward and (optional) longer-term development of the residency training program.

(2) *Personnel Qualifications and Experience (30 points):*

• Project Leadership—For the technical and administrative leadership of cooperative agreement, successful applicants must document expertise, relevant experiences, leadership/management skills, availability of a qualified project manager, and organizational (including cross-organizational) management structure able to successfully plan, implement, and evaluate the project. Such documentation should include examples of previous relevant experience in training health care professionals in developing countries in maternal and child health programs; examples of successful management of broad scope training programs in hospital settings in resource poor environments; examples of successful assessment of and, optionally, full responsibility for development of specialty physician (residency) training particularly in resource-poor settings; and examples of successful collaborations with other partner organizations, subcontractors, and/or consultant efforts in similar endeavors. Additionally, documentation of previous experience in training ancillary hospital staff in developing countries is expected.

• Partner Institutions and other Personnel—Applicants should provide documented evidence of availability, training, qualifications, expertise, relevant experience, salary history, and education and competence of the scientific, clinical, analytical, technical and administrative staff and any other proposed personnel (including partner institutions, subcontractors and consultants), to perform the requirements of the work activities as evidenced by resumes, endorsements and explanations of previous efforts. It is anticipated that the successful applicant will represent a consortium of well-suited parties for the various major activities of the cooperative agreement program.

• Staffing Plan—Applicants should submit a detailed staffing plan for the conduct of the project, including the appropriateness of the time commitment of all staff and partner institutions, the clarity and appropriateness of assigned roles, and specific lines of authority. Applicants should also provide an organizational chart for each partner institution named in the application showing relationships among the key personnel. If applicants develop legally binding relationships with partner institutions for the purpose of this cooperative agreement, copies of these agreements should be submitted with the application.

• Administrative and Organizational Framework—Adequacy of the administrative and organizational framework, with lines of authority and responsibility clearly demonstrated among the applicant's internal partners and with HHS and the MOH, and adequacy of the project plan, with proposed time schedule for achieving objectives and maintaining quality control over the implementation and operation of the project. Adequacy of back-up staffing and the evidence that they will be able to function as a team. The framework should identify the institution that will assume legal and financial responsibility and accountability for the use and disposition of funds awarded on the basis of this RFA.

(3) *Past Experience and Capabilities of the Organization (15 points):*

• Applicants should submit documented relevant experience of the organization in managing projects of similar complexity and scope of the activities.

• Adequacy, feasibility, and past experience in successfully coordinating multiple partner collaboration. Clarity and appropriateness of lines of communication and authority for coordination and management of the project.

• Documented experience recruiting qualified medical personnel for projects of similar complexity and scope of activities.

• Documented capability and past history of funds management meeting the highest acceptable standards of accounting.

(4) *Facilities and Resources (15 points):*

Documented availability and adequacy of facilities, equipment and resources necessary to carry out the activities specified under Program Requirements, including logistical support facilities and resources.

VI.1 Award Administration Information

HHS does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will by letter regarding the outcome of their applications. The official document notifying an applicant that an application has been approved and funded is the Notice of Grant Award, which specifies to the award recipient the amount of money awarded, the purpose of the cooperative agreement, the terms and conditions of the cooperative agreement award, and the amount of funding, if any, to be contributed by the award recipient to the project costs.

VI.2. Administration and National Policy Requirements

In accepting this award, the grantee stipulates that the award and any activities hereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant. Within 60 days of receiving the Notice of Grant Award, a finalized work plan for year one of the project will be negotiated with the OFP Project Officer. In the succeeding years, the training plan and other training events will be a part of the continuation application. The OFP will identify training priorities for the coming year to the male training program within 60 days of the due date for the continuation application.

The Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with grant funds should be American-made.

A Notice providing information and guidance regarding the ''Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs'' was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grantees and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the Notice is available electronically on the OMB home page at *http://www.whitehouse.gov/omb.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

VI.3 Reporting

A successful applicant under this notice will submit: (a) Annual progress reports; (b) annual Financial Status Reports; and (c) a final progress report and Financial Status Report. Reporting formats are established in accordance with provisions of the general regulations which apply under 45 CFR parts 74 and 92. Applicants must submit all required reports in a timely manner, in recommended formats (to be provided) and submit a final report on the project, including any information on evaluation results, at the completion of the project period. Agencies receiving $500,000 or more in total Federal funds are required to undergo an annual audit as described in OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

VII. Agency Contacts

For assistance on administrative and budgetary requirements, Eric West, HHS Office of Public Health and Science (OPHS) Grants Management Office, (301) 594–0758.

For assistance with questions regarding program requirements, Dr. Amar Bhat, HHS Office of Global Health Affairs, (301) 443–1410.

Dated: August 20, 2004.

Arthur J. Lawrence,

Assistant Surgeon General, Acting Principal Deputy Assistant Secretary for Health, Office of Public Health and Science.

[FR Doc. 04–19462 Filed 8–24–04; 8:45 am]

BILLING CODE 4150–28–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–04–OC]

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 or send an e-mail to *omb@cdc.gov.* 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

Survey Development: Child Stress and Toxics (Pediatric Environmental Perception Scale)—New—The Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its 1986 amendments, the Superfund Amendments and Reauthorization Act (SARA), to serve the public by using the best science, taking responsive public health actions, and providing trusted health information to prevent harmful exposures and disease related to toxic substances.

For the past 6 years, ATSDR has worked with the U.S. Environmental Protection Agency (EPA), the Substance Abuse and Mental Health Services Administration (SAMSHA), state health departments, and local communities on the issue of psychosocial stress due to the presence of toxic hazards. A significant amount of research has focused on adult psychosocial stress in communities affected by hazardous substances. Comparatively little is known about levels of psychosocial stress among children or other susceptible populations in these settings. There is a critical need to develop a research instrument to screen children who live in communities at or near hazardous waste sites for elevated stress levels. The instrument will facilitate the establishment of group norms for levels of stress in children and is not intended to provide clinical

or diagnostic information on individual children.

The purpose of this project is to: (1) Develop and pilot-test a scale to assess levels and sources of psychosocial stress in children who live in communities at or near hazardous waste sites; (2) modify the scale based on pilot-test results; (3) validate the scale on children living in communities near hazardous waste sites; and (4) provide an evidence base for planning and conducting interventions in affected communities.

CDC will pilot test the scale on at least 50 children in two age groups (6th and 8th grade levels) at one or more test sites. Semi-structured interviews or focus groups will be conducted to determine whether additional variables need to be included in the scale. During the second and third phases of the project, a scale will be used to screen up to 4,950 children in communities at or near hazardous waste sites. CDC plans to then use this data to create effective interventions methods to predict and explain levels of stress in children living around hazardous waste sites. The estimated annualized burden is 825 hours; there are no costs to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)
Children 10–17 years old—Phase I	50	1	40/60
Children 10–17 years old—Phase II	200	1	20/60
Children 10–17 years old—Phase III	4,750	1	30/60

Dated: August 13, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–19424 Filed 8–24–04; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fetal Alcohol Syndrome Prevention and Surveillance in South Africa: Developing Community-Level Strategies That Work

Announcement Type: New.

Funding Opportunity Number: RFA DD05–011.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: September 24, 2004.

Application Deadline: November 23, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 307,317(C), and 317(k)(2) of the Public Health Service Act42 U.S.C., Sections 241, 242 (I), 247b-4 and 247b (k) (2) as amended].

Purpose: The purpose of this program is to develop a model prevention program, successful in reducing hazardous alcohol use, reducing unintended pregnancies and/or promote pregnancy delay among childbearing age women at risk for an alcohol-exposed pregnancy in high risk communities (urban and rural) for Fetal Alcohol Syndrome (FAS) in SouthAfrica. This program should be conducted in three stages.

Stage 1: The formative research state is composed of qualitative and quantitative research of knowledge, attitudes and practices in high risk women (women of child-bearing age at high risk of an alcohol-exposed pregnancy; women with children with FAS, spouses/partners, health care providers, obstetricians and nurses, specialty providers including alcohol treatment and substance abuse services, community leaders, *etc.*) regarding use of alcohol in pregnancy, use of contraception, knowledge of FAS, as well as issues such as identification of services and barriers to services. The formative research will describe the socio-demographic characteristics and attributes of the targeted community at risk, identify constraints and opportunities for behavior change, and allow the initiation and conduct of community and person-level interventions under stage 2.

Stage 2: The protocol and intervention development stage will use the information gathered in Stage 1 in combination with previous evidence-based research in FAS and HIV prevention in the U.S. and South Africa to develop a model intervention.

Stage 3: This stage will test the feasibility of the major components of the program in the high risk FAS communities targeted in this announcement.

The targeted communities should include geographic areas and/or selected subpopulations of childbearing-age women at high risk for an alcohol-exposed pregnancy in urban and rural areas of South Africa.

This program addresses the ''Healthy People 2010'' focus area *of Substance Abuse and Maternal, Infant, and Child Health.*

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center on Birth Defects and Developmental Disabilities (NCBDDD): Prevent birth defects and developmental disabilities.

Research Objectives and Background: FAS is caused by maternal alcohol use during pregnancy and is one of the leading causes of preventable birth defects and disabilities. Recently, the highest prevalence of FAS worldwide was reported among children living in the winery area of the Western and Northern Cape region of South Africa with FAS prevalence rates ranging from 40.5 to 46.4 per 1,000 children. In the Gauteng region of South Africa(outside the wine-growing region) FAS prevalence rates range from 11.8 to 41.0 per 1,000 children. In addition, CDC has implemented a monitoring system in the area of De AAR, where the FAS prevalence rate was 80 per 1,000 live births. These rates show that FAS is a serious public health problem in some areas or subgroups of the South African population.

Important risk factors associated with heavy alcohol use among childbearing-age women include use of tobacco and other drugs, co-existing psychiatric conditions, history of sexual or physical abuse during childhood and/or adulthood, and a previous alcohol-exposed pregnancy. Studies have found that the strongest predictor of alcohol use during pregnancy is the level of alcohol use prior to pregnancy. Most of the same risk factors in women at risk of an alcohol-exposed pregnancy are also found in women at high risk for HIV infection.

Essential strategies for preventing alcohol-exposed pregnancies among high-risk women who are heavy alcohol users can include individual, group and community level interventions. Examples of individual level

interventions are: Provide one-on-one client services that offer counseling to reduce or abstain from alcohol intake, assist clients in assessing their own behavior and planning individual behavior change, support and sustain behavior change, and facilitate linkages to community health services (*i.e.*, alcohol treatment services) in support of behaviors and practices that prevent FAS. Such efforts must be coupled with strategies which address pregnancy postponement until the risk of prenatal alcohol use can be overcome. These approaches can be enhanced by developing local capacity through education and training of key public and private providers in the community.

Group level interventions shift the delivery of service from individual to groups of varying sizes. Group level interventions provide education and support in group settings to promote and reinforce safer behaviors and to provide interpersonal skills training in negotiating and sustaining appropriate behavior change to childbearing-age women at increased risk for FAS.

Community level interventions are directed at changing community norms, and increasing community support of the behaviors known to reduce the risk of FAS. Change in community attitudes, norms, and practices are brought about through health communication, social (prevention) marketing, community mobilization and organization, and community wide events.

Under identification of target population(s), applicants must identify urban and rural areas in which to conduct formative, epidemiologic, and intervention study activities. An entire province could be defined as a project geographical area or several regions or counties could be combined (containing both urban and rural populations) to establish the minimum eligibility criteria for FAS cases or childbearing-age women at risk. Applicants must be able to demonstrate that the area(s) selected include both urban and rural populations (within one defined geographical area or in two or more geographical areas with separate urban and rural populations).

In each case, the geographical area(s) selected must be representative of the country with at least 350,000 urban and rural childbearing-age women or a birth cohort of at least 25,000 births per year; and with high proportions of childbearing-age women at risk for an alcohol-exposed pregnancy [a minimum of 10 percent of non-pregnant, childbearing age women (aged 12–44 years) reporting frequent or binge drinking]; or a birth cohort with a minimum FAS prevalence rate of 10 per 1,000 live births; or communities with a high prevalence of HIV—due to the fact that FAS populations share common behavior patterns of substance abuse and sexual behavior; or by describing the high risk targeted population with relevant socio-demographic and epidemiological characteristics.

A woman who is at high risk for an alcohol-exposed pregnancy is one who engages in moderate (7–13 drinks per week) to heavy alcohol use (14 or more drinks per week) or binge drinking (4 or more drinks in a single occasion), is sexually active, and is not effectively practicing contraception.

The development of a model FAS prevention program for high risk communities in South Africa as specified in this announcement should include the aforementioned 3 stages.

Stage I: Formative research will be undertaken in the first year of the project, and should include conducting a community-based assessment to determine the women who are at highest risk within the community. This includes determining the characteristics of women at risk for an alcohol-exposed pregnancy, but not limited to those who have already had a child with FAS; and the risk characteristics of women at risk for HIV. Identification of environmental factors that could contribute to FAS; and potential venues for enrolling these populations for intervention services to prevent FAS will also be identified. This assessment could draw on existing data (through FAS surveillance systems) or on newly collected population-based data. Included within the scope of this work is conducting a needs assessment of health providers as to the services provided to the targeted populations including any perceived or real gaps between needs, expectations, and services delivered.

Stage II: The protocol and intervention development stage should be implemented during the first half of year two. Interventions should be developed to address the specific priority needs identified in Stage 1 including preparation of a study protocol to test the feasibility, acceptability, operational requirements of the interventions, and the development of an intervention evaluation plan including appropriate process and outcome measures. The protocol will include choices of sites, selection criteria for childbearing-age women at risk of an alcohol-exposed pregnancy, interventions and implementation methods, and the study evaluation. Piloting the protocol should be included in Stage II.

Stage III: The feasibility and evaluation stage is to be accomplished in the second half of year two and during year three of the project. It includes the implementation and evaluation of the model intervention(s) to assess whether the intervention can be appropriately utilized and replicated.

Activities: Awardee activities for this program are as follows:

1. Design an effective, innovative research approach that identifies and prioritizes key elements that are essential to community-based FAS prevention activities in the target populations.

2. Independent of the funding agency, develop a protocol to conduct community-based epidemiological and behavioral information gathering in childbearing age women populations that can include risky drinking behavior, sexual behavior patterns, social networks, substance abuse behavior, perceptions of social sexual norms, attitudes, self-efficacy, perception of current FAS prevention interventions, health-care and health-information seeking behaviors, and structural influences on behavior in order to determine the most appropriate intervention strategies to be used.

3. Identify, recruit, obtain informed consent forms and enroll and follow to completion participants as determined by the project-developed study protocol. Ensure that the protocol developed by the recipient details the study design, includes sample size calculations, denotes a study timeline, and conveys provisions to maintain confidentiality of study subjects.

4. Based on the recipient's independently developed protocol, assess maternal alcohol exposure through surveys and interviews with a sample of pregnant and non-pregnant women in the targeted population.

5. Perform tests as determined by the study protocol, and follow study participants over time as determined by the project-developed protocol.

6. Conduct needs assessment of health providers and other services provided to these populations. Determine the needs gap between the population and the services they receive.

7. Design and implement a provider education component for health personnel involved in intervention and surveillance and monitoring activities.

8. Develop and implement a feasibility protocol for prevention of FAS in a targeted geographic region as determined by the project that has increased rates of women at high risk for an alcohol-exposed pregnancy and/or increased rates of infants and children with FAS. Strengthen and improve

public health infrastructure to prevent FAS supporting additional services and links with existing, community-based programs that provide preventive health services.

9. Collect and evaluate information that could generate hypotheses about barriers to or opportunities for more efficacious innovations in FAS prevention including linkages with other populations at risk such as women at risk of HIV.

10. Collaborate with CDC as needed by requesting assistance in process and operational procedures.

11. Conduct project-developed research activities to answer specific research questions.

12. Provide appropriate privacy protections in accordance with the research protocol and informed consent stipulations for all participants.

13. Promote the peer-review of the study findings in the publication of study results.

14. Collect and analyze study data and prepare a final report of the outcomes of the study with recommendations for future research and prevention efforts.

CDC Responsibilities: In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. In this cooperative agreement, CDC Scientists (Scientific Liaisons) within the National Center on Birth Defects and Developmental Disabilities (NCBDDD) are an equal partner with scientific and programmatic involvement during the conduct of the project through technical assistance, advice, and coordination. These Scientific Liaisons will:

(1) Use their experience in studies of this nature to advise the project on specific questions regarding the project-developed protocol.

(2) As requested, assist the project in responding to inquiries regarding such areas as data management, data analysis, formats for presenting research findings, and in comparing project-developed evaluation formats with other research projects and activities known to CDC.

(3) Provide scientific consultation and technical assistance as requested on questions related to epidemiology, statistical and power calculations, and data storage and tracking formats used in other CDC sponsored research that could be advantageous to the project.

(4) Suggest to the project, upon request; processes for analysis, interpretation, and reporting of findings in the literature that can serve domestic and international scientific interests.

(5) In working with the selected foreign entity, provide technical assistance and advice, and participate as an advisor in the collecting of information from the government's nationals.

CDC Scientific Program Administrator (SPA): The CDC NCBDDD will appoint an SPA, apart from the NCBDDD Scientific Liaisons who will:

(1) Serve as the Program Official for the funded research institutions.

(2) Carry out continuous review of all activities to ensure objectives are being met.

(3) Attend Coordination Committee meetings for purposes of assessing overall progress and for program evaluation purposes.

(4) Provide scientific consultation and technical assistance in the conduct of the project as requested.

(5) Conduct site visits to recipient institutions to determine the adequacy of the research and to monitor performance against approved project objectives.

Collaborative Responsibilities: The planning and implementation of the cooperative aspects of the study will be effected by a Coordination Committee consisting of the Principal Investigator from the participating institution and the CDC Scientific Liaisons. This Coordinating Committee will formulate a plan for cooperative research.

At periodic coordination committee meetings, the group will: (1) Make recommendations on the study protocol and data collection approaches; (2) discuss the target populations that have been or will be recruited; (3) identify and recommend solutions to unexpected study problems; and (4) discuss ways to efficiently coordinate study activities and best practices.

II. Award Information

Type of Award: Cooperative Agreement

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U84.

Fiscal Year Funds: 2005.

Approximate Total Funding: $300,000 (The estimated funding amount is pending availability of FY 2005 funds, and is subject to change.)

Approximate Number of Awards: One.

Approximate Average Award: $300,000. This amount is for the first 12-month budget period, and includes both direct and indirect costs.

Floor of Award Range: $285,000.

Ceiling of Award Range: $315,000. If you request a funding amount greater than the upper threshold, your application will not be eligible for review. You will be notified that you did not meet the submission requirements.

Anticipated Award Date: June 1, 2005.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

III. Eligibility Information

III.1. Eligible Applicants: Support will be provided only to non-profit NGOs or Universities in South Africa that can perform this activity. Applicants must identify and document their capacity to address urban and rural populations and meet the required volume of childbearing age women or birth cohort size, and the proportions of childbearing age women at risk or a birth cohort with a minimum FAS prevalence rate or communities with high HIV prevalence or the high risk targeted populations noted under the ''Identification of Target Populations'' discussion in this announcement. Providing precise information as to how these requirements will be met is essential to the consideration of your application for review.

III.2. Cost Sharing or Matching: Matching funds are not required for this program.

III.3. Other Eligibility Requirements: If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Applicants must document their present infrastructure, capacity, expertise, and experience (within organization or within organizations of collaborators) in conducting research directly related to the awardee activities cited in this announcement. Applicants must provide specific evidence to substantiate this capacity, experience, and expertise. Through documentation of a maximum of three pages in length, applicants must demonstrate that they can fully meet all eligibility criteria in order to be considered for formal review, and that they can conduct all project operations as noted under the listed stages for this program. This information must be included as part of the application and inserted immediately after the Face Page of the application.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the

proposed research is invited to work with their institution to develop an application for support. Individuals from under-represented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package: To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: (770) 488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission:

Letter of Intent (LOI): The LOI must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One-inch margins.
- Printed only on one side of page.
- Single spaced.
- Written in English; avoid jargon.

The LOI must contain the following information: Name, address, and telephone number of the proposed Principal Investigator, number and title of this program announcement, names of other key personnel, designations of collaborating institutions and entities, and an outline of the proposed work, recruitment approach, and expected outcomes.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at (770) 488–2700, or contact GrantsInfo, Telephone (301) 435–0714, e-mail: *GrantsInfo@nih.gov*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This announcement uses the non-modular budgeting format. The PHS 398 grant application form requires the applicant to enter the project title on page 1 (Form AA, ''Face Page'') and the project description (abstract on page 2).

The main body of the application narrative should not exceed 25 single-spaced pages. This narrative research plan should address activities to be conducted over the entire project period.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information may include curriculum vitae and resumes for key project staff, organizational charts, letters of commitment and support, graphic work plan with time intervals related to goals and objectives, etc.; and should be limited to those items relevant to the requirements of this announcement. Applicants must provide a graphic work plan that outlines major goals and objectives with timelines established for each calendar quarter covering the entire project period.

All material must be typewritten, with 10 characters per inch type (12 point) on 8½ by 11 inch white paper with one inch margins, no headers or footers (except for applicant-produced forms such as organizational charts, c. vitae, graphs and tables, *etc.*). Applications must be held together only by rubber bands or metal clips, and not bound together in anyway (including attachments/appendices).

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Time:

Letter of Intent (LOI) Deadline Date: September 24, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and will allow CDC to plan the application review.

Application Deadline Date: November 23, 2004.

Explanation of Deadlines: **Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.** If you send your application by the appropriate postal service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on LOI and Application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions: Restrictions, which must be taken into account while writing your budget are:

- Project funds cannot be used to supplant other available applicant or collaborating agency funds for construction or for lease or purchase of facilities or space.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services.

Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

• The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

• The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required.)

• All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

• You must obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

• A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

• If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months from the application due date.

IV.6. Other Submission Requirements:

LOI Submission Address: Lisa T. Garbarino, Public Health Analyst National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, Mailstop E–87, Atlanta, Georgia 30333, United States of America, e-mail address: *lgt1@cdc.gov.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—RFA DD05–011, Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341, United States of America.

Applications may not be submitted by fax or e-mail at this time.

At the time of submission, four additional copies of the application, and all appendices must be sent to: Lisa T. Garbarino, Public Health Analyst, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, Mailstop E–87, Atlanta, Georgia 30333, United States of America, e-mail address: *lgt1@cdc.gov.*

V. Application Review Information

V.1. Criteria: You are required to provide measures of outcome and effectiveness that will demonstrate the accomplishment of the various identified objectives for each stage of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals. The scientific review group will address the applications' overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score.

Under the evaluation criteria noted below, applicants must describe how they will address the program components as they relate to the Purpose and Research Objectives, and Recipient Activities as cited in this Announcement.

Your application will be evaluated against the following criteria:

1. Resources and Organizational Capacity:

• Does the applicant have experience, within its organization or the organization of partners to meet all the requirements of this announcement?

• Does the applicant have an existing infrastructure, within its organization or the organization of partners, sufficient to carry out the screening and follow-up in the proposal?

• Does the applicant have the ability to promptly assemble an effective team with the experience and time commitments to promote full attention to the planning, implementation and evaluation of the project?

• Does the applicant, together with its partner organizations, have the capability to conduct the project, taking into account its institutional experience and current activities related to FAS?

• Does the applicant have the capacity to provide effective organizational collaborations, partnerships and formal agreements (including contractual), enabling the applicant to meet all project implementation and operational requirements?

2. Methods and Activities:

• Do the proposed methods and activities convincingly and comprehensively meet the intention of the announcement?

• Is the overall plan for planning, implementation and evaluation comprehensive and appropriate to accomplish the stated goals and objectives?

• Are methods and activities feasible within programmatic and fiscal restrictions?

• Will the methods and activities produce accurate, valid and reliable data?

• Are the calculated statistical power and the potential capacity of the research design adequate to generate meaningful results during the study period?

• Can the design be easily replicated for future use by sponsoring organizations and entities and an adequate plan presented for the dissemination of findings and recommendations for the benefit of other public health agencies?

• Does the applicant have a plan that will assure the privacy of all data collected, and that the identity of all participants will be protected from disclosure as specified through the project protocol and informed consent process?

3. Management, Staffing, and Objectives:

• Does the applicant have sufficient scientific resources for project planning and data management/analysis within the applicant's organization or through collaboration with universities or other agencies?

• Are the proposed staffing, staff qualifications and experience, and project organization sufficient to accomplish the objectives of the program?

• Does the proposed management and staffing include the specified tasks and responsibilities to be assigned for key positions proposed for financial

assistance, and for other personnel contributing to the project?

• Are the project goals and objectives relevant, specific, achievable, and measurable and can they be addressed through the proposed methods and within the proposed timeline?

4. Evaluation Plan:

• Have the evaluation components described in the announcement been addressed in the proposal?

• Are measurable objectives included in the proposal, and are the methods proposed appropriate for the measurable objectives?

• Does the evaluation plan include a process for overall evaluation of sub-components and the entire project, including the assignment of responsibility for ongoing review of specified components?

5. Budget Description and Justification: This includes the comprehensiveness and adequacy of the proposed budget in relation to program operations, collaborations, and services; and the extent to which the budget is reasonable, clearly justified, accurate, and consistent with the purposes of this research.

6. Protections: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This criteria will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

7. Inclusion: Does the application adequately address the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

V.2. Review and Selection Process: Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by NCBDDD. Incomplete applications and applications that are non-responsive as to the eligibility criteria and other eligibility requirements will not advance through the review process. Applicants will be notified that their application did not meet submission requirements and will not receive further consideration.

Applications, which are complete and responsive, will be subjected to a preliminary evaluation (triage) by the scientific review group (Special Emphasis Panel—SEP) composed of external (non-CDC) peer reviewers to determine if the application is of sufficient technical and scientific merit to warrant further review by the SEP. Applications that are determined to be non-competitive will not be considered. Subsequent to the review meeting CDC will notify the investigator/program director and the official signing for the applicant organization of that determination.

Applications determined to be competitive will then be reviewed and scored under the formal SEP peer review process. The review of these fully competitive applications will result in the determination of the score and ranking for those applications.

Subsequent to the formal peer review by the SEP, a second level of review will be conducted by senior CDC program staff. This review is not intended to revisit the scientific merit of the applications. It is designed to review and discuss issues related to the adequacy and justification of the proposed budgets and funding ceilings, and to review the overall rating and ranking of all recommended applications. This will be done in order to prepare recommendations for funding based on the scientific merit as determined by the SEP; and to ensure that the recommendations are consistent and compatible with the Review and Selection section of the original program announcement.

V.3. Anticipated Award Date: June 1, 2005.

VI. Award Administration Information

VI.1. Award Notices: If your application is to be funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements: 45 CFR parts 74 and 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirement for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting Systems Requirements
- AR–15 Proof of Non-Profit Status
- AR–22 Research Integrity
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements: You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001), on a date to be determined for your project for each subsequent budget year. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities and Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activities and

d. Objectives.

e. Budget.

f. Additional Requested Information.

g. Measures of Effectiveness.

2. Financial status report and annual report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions contact: Technical Information Management Section (PGO–TIM), CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341, United States of America, Telephone: (770) 488–2700.

For program technical assistance, contact: Lisa T. Garbarino, Public Health Analyst, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, Mailstop E–87,Atlanta, Georgia 30333, United States of America, e-Mail Address: *lgt1@cdc.gov*, Telephone: (404) 498–3979.

For budget assistance, contact: Vincent Falzone, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341, United States of America, Telephone: (770) 488–2763, e-mail: *Vfalcone@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: August 19, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–19425 Filed 8–24–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: September 19, 2004, 12 p.m.–7 p.m.; September 20, 2004, 8:30 a.m.–5 p.m.; September 21, 2004, 9 a.m.–5:30 p.m.; September 22, 2004, 8 a.m.–10:30 a.m.

Place: Radisson Miyako Hotel, 1625 Post Street, San Francisco, California 94115–3603, (415) 922–3200.

Status: The meeting will be open to the public.

Agenda: The Council will be meeting in San Francisco, CA, in conjunction with the National Association of Community Health Care Centers. Members will have the opportunity to meet with community health care center administrators around issues of increased utilization of the National Health Service Corps programs and projections for workforce demands.

FOR FURTHER INFORMATION CONTACT: Tira Robinson-Patterson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 8A–55, Rockville, MD 20857, telephone (301) 594–4140.

Dated: August 19, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–19489 Filed 8–24–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2324–04]

Termination and Re-Designation of Liberia for Temporary Protected Status

AGENCY: Department of Homeland Security, Bureau of Citizenship and Immigration Services.

ACTION: Notice.

SUMMARY: The Temporary Protected Status (TPS) designation of Liberia will expire on October 1, 2004. This notice terminates the current designation of Liberia and re-designates Liberia for TPS. The Attorney General designated Liberia for TPS on October 1, 2002. The Secretary of the Department of Homeland Security (DHS) had extended Liberia TPS through October 1, 2004. After reviewing conditions in Liberia, the Secretary of DHS finds that, while the armed conflict has ended, there are extraordinary and temporary conditions that prevent the safe return of nationals to Liberia. The re-designation will allow nationals of Liberia who have been continuously physically present in the United States since August 25, 2004, and continuously resided in the United States since October 1, 2002, to apply for TPS. This notice also sets forth procedures necessary for nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) to register for TPS. All current Liberia TPS beneficiaries who wish to continue to receive TPS benefits will have to register for TPS according to the procedures set forth in this notice.

EFFECTIVE DATE: The re-designation of Liberia's TPS designation is effective October 1, 2004, and will remain in effect until October 1, 2005. The registration period begins August 25, 2004, and will remain in effect until February 21, 2005.

FOR FURTHER INFORMATION CONTACT: Colleen Cook, Residence and Status Services, Office of Programs and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Terminate the Designation of Liberia and Re-Designate Liberia Under the TPS Program?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities for administering the TPS program held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state (or part thereof) for TPS. The Secretary of DHS may grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Secretary of DHS does not determine that a foreign state (or part thereof) no longer meets the conditions for designation at least 60 days before the designation or extension is due to expire, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of DHS Decide To Terminate and Re-Designate Liberia Under the TPS Program?

On October 1, 2002, the Attorney General published a notice in the **Federal Register** designating Liberia under the TPS program based on its ongoing armed conflict. 67 FR 61664. The Secretary of DHS extended this TPS designation by Notice published in the **Federal Register** on August 6, 2003 at 68 FR 46648, determining that the conditions warranting such designation continued to be met.

Since the date of the most recent extension, DHS and the Department of State (DOS) have continued to review conditions in Liberia. DHS and DOS have determined that, because the armed conflict has concluded, the conditions that prompted designation no longer exist. Accordingly, the Secretary of DHS is terminating the designation of Liberia for TPS under 8 U.S.C. 1254a(b)(3)(B). However, the Secretary of DHS finds that there are extraordinary and temporary conditions in Liberia that prevent the safe return of certain nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia). Further, it is determined that it is not contrary to the national interest of the United States to permit nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who qualify for TPS to remain temporarily in the United States. Therefore, the re-designation of Liberia for TPS is warranted under 8 U.S.C. 1254a(b)(1)(C).

DOS observes that a peace agreement has been signed and that the civil war has ended. (DOS Recommendation (May 12, 2004)). The BCIS Resource Information Center (RIC) reports that between March and May 2004 there were no reports of conflict. (RIC Report (July 1, 2004)). The disarmament, demobilization and reintegration (DDR) program has begun; however, the United Nations has not completed the demobilization of the armed groups. (DOS Recommendation (May 12, 2004)). Approximately 42,000 combatants from the three armed factions (Liberian government forces, Liberians United for Reconciliation and Democracy (LURD) and Movement for Democracy in Liberia (MODEL)) have been disarmed since December 2003. Estimates of the total number of combatants range from 40,000 to 60,000. *Id.* In June 2004, the United Nations Security Council decided to continue sanctions on diamond and timber exports due to widespread corruption in the new government and failure of the government to effectively control large swathes of the interior. (RIC Report (July 1, 2004)).

The protracted civil war has damaged Liberia's infrastructure. Eighty percent of the pre-war housing stock has been damaged. (RIC Report (July 1, 2004)). Less than ten percent of the arable land is under cultivation. *Id.* Food security, shelter, water, sanitation, and healthcare remain practically non-existent. (DOS Recommendation (May 12, 2004)). Due to the damage to infrastructure caused by the civil war, certain nationals of Liberia cannot yet return home safely. There are 300,000 Liberian refugees in neighboring countries and 500,000 displaced within Liberia. (RIC Report (July 1, 2004)). However, the United Nation High Commission for Refugees (UNHCR) plans to begin to facilitate returns of Liberian refugees from surrounding countries in October, 2004. The current voluntary return of refugees from neighboring countries is already taxing the limited resources of the country. (DOS Recommendation (May 12, 2004)).

Based upon this review, the Secretary of DHS, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Liberia for TPS are no longer met. 8 U.S.C. 1254a(b)(3)(A) and (B). The armed conflict has ceased. However, the Secretary of DHS also finds that the damage caused by the civil war has led to extraordinary and temporary conditions in Liberia that prevent the safe return of certain nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who originally registered for TPS in 2002. The Secretary of DHS also finds that permitting nationals of Liberia who qualify for TPS to remain temporarily in the United States is not contrary to the national interest of the United States. 8 U.S.C. 1254a(b)(1)(C). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Liberia based on an ongoing, armed conflict should be terminated and Liberia should be re-designated for TPS due to extraordinary and temporary conditions. 8 U.S.C. 1254a(b)(3)(B) and 8 U.S.C. 1254a(b)(1)(C).

If I Currently Have TPS Through the Liberia TPS Designation, Do I Have To Register for the New TPS Designation?

Yes. If you already have received TPS benefits through the Liberia TPS designation, your benefits will expire on October 1, 2004. Accordingly, individual TPS beneficiaries must comply with the registration requirements described below in order to maintain their TPS benefits through October 1, 2005. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

How Do I Register for TPS Benefits?

Applicants for TPS may register under the re-designation by filing (1) a Form I–821, Application for Temporary Protected Status, with the fifty dollar ($50) filing fee; (2) a Form I–765, Application for Employment Authorization; (3) two identification photographs (1½ inches × 1½ inches); (4) supporting evidence as required to establish eligibility for TPS benefits as provided in 8 CFR 244.9); and (5) a biometrics fee of seventy dollars ($70) for each applicant over age 14. See the chart below to determine whether you must submit the one hundred and seventy five dollar ($175) filing fee with Form I–765.

An application submitted without the required fee and/or photos will be returned to the applicant. Submit the completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 180-day registration period that begins August 25, 2004, and ends February 21, 2005. An interim employment authorization document will not be issued to an applicant unless the Form I–765, as part of the TPS registration package, has been pending with BCIS more than 90 days after all requested initial evidence has been received, including collection of the applicant's fingerprints at an Application Support Center (ASC). *See* 8 CFR 103.2(b)(10)(ii) and 8 CFR 274a.13(d).

If . . .	Then . . .
You are applying for employment authorization until October 1, 2005 ...	You must complete and file the Form I–765, Application for Employment Authorization, with the $175 fee if you are between the ages 14 and 65 (inclusive).

If . . .	Then . . .
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $175 fee, but must still complete and submit Form I–765 for data gathering purposes.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii); 8 U.S.C. 1254a(c)(2)(B)(ii).

Can I Apply for Another Immigration Benefit While Registered for TPS?

Yes. Registration for TPS does not prevent you from applying for another non-immigrant status or from filing for adjustment of status based on an immigrant petition. TPS alone, however, does not lead to adjustment of status. 8 U.S.C. 1254a(a)(5) and 8 U.S.C. 1254a(f)(1). For the purposes of change of status and adjustment of status, during the period in which an alien is granted TPS the alien is considered as being in, and maintaining, lawful status as a nonimmigrant. 8 U.S.C. 1254a(f)(4).

Does This Re-Designation Allow Nationals of Liberia (or Aliens Having No Nationality Who Last Habitually Resided in Liberia) Who Entered the United States After October 1, 2002 to Register for TPS?

No. Although this is a notice re-designating Liberia for TPS, the Secretary of DHS has discretion to set the date by which TPS beneficiaries must have established continuous residence in the country. 8 U.S.C. 1254a(c)(1)(A)(ii). This re-designation retains the date of continuous residence of the previous TPS designation, October 1, 2002. To be eligible for benefits under this re-designation, nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) must have been continuously physically present in the United States since August 25, 2004, and have continuously resided in the United States since October 1, 2002.

What Happens When This Designation of TPS Expires on October 1, 2005?

At least 60 days before this designation of TPS expires on October 1, 2005, the Secretary of DHS will review conditions in Liberia and determine whether the conditions for designation under the TPS program continue to be met, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

Notice of Termination of Designation of Liberia and Re-Designation of Liberia Under the TPS Program

By the authority vested in DHS under sections 244(b)(1) and (b)(3) of the Act, DHS has consulted with the appropriate government agencies and determined that Liberia no longer meets the conditions that prompted designation of Liberia for TPS. 8 U.S.C. 1254a(b)(3)(A) and (B). DHS has also consulted with the appropriate government agencies concerning the re-designation of TPS for Liberia. From these consultations DHS finds that, owing to the damage caused by the civil war, there exist extraordinary and temporary conditions that prevent aliens who are nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) from safely returning to Liberia. 8 U.S.C. 1254a(b)(1)(C). Accordingly, DHS orders as follows:

(1) The designation of Liberia under section 244(b)(1)(A) of the Act is terminated. 8 U.S.C. 1254a(b)(3)(B).

(2) Liberia is re-designated for TPS under section 244(b)(1)(C) of the Act. 8 U.S.C. 1254a(b)(1)(C).

(3) Nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who have been continuously physically present in the United States since August 25, 2004, and who have continuously resided in the United States since October 1, 2002, may apply for TPS during the 180-day registration period from August 25, 2004, until February 21, 2005.

(4) There are approximately 3,792 nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who have been granted TPS and who are eligible for registration under the re-designation.

(5) To register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; (3) two identification photographs (1½ inches by 1½ inches); (4) supporting evidence as required to establish eligibility for TPS benefits as provided in 8 CFR 244.9; and (5) a biometrics fee of seventy dollars ($70) for each applicant over age 14. Applications submitted without the required fee and/or photos will be returned to the applicant. The fee for filing a Form I–821 is fifty dollars ($50). If the applicant is between the ages of 14 and 65 (inclusive) and requests employment authorization, he or she must submit one hundred and seventy-five dollars ($175) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee for filing the Form I–765.

(6) At least 60 days before this designation terminates on October 1, 2005, the Secretary of DHS will review the designation of TPS for Liberia and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(7) Information concerning the termination and re-designation of Liberia for TPS will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://uscis.gov.*

Dated: July 28, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–19448 Filed 8–24–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17971]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: 1625–0019, 1625–0041, 1625–0062, 1625–0088 and 1625–0092

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded five Information Collection Reports (ICRs)—(1) 1625–0019, Alternative Compliance for International and Inland Navigation Rules—33 CFR Parts 81 and 89; (2) 1625–0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates; (3) 1625–0062, Approval of Alterations to Marine Portable Tanks; Approval of Non-Specification Portable Tanks; (4) 1625–0088, Voyage Planning for Tank Barge Transits in the Northeast United States; and (5) 1625–0092, Sewage and Graywater Discharge Records for Certain Cruise Vessels Operating on Alaskan Waters—abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. These ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before September 24, 2004.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2004–17971] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh, Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the completed ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Mr. Arthur Requina), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, 202–267–2326, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2004–17971], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Regulatory History: This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published (69 FR 32362, June 9, 2004) the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments: The Coast Guard invites comments on the proposed collection of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the Information Collection Reports (ICR) addressed. Comments to DMS must contain the docket number of this request, USCG 2004–17971. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Alternative Compliance for International and Inland Navigation Rules—33 CFR Parts 81 and 89.

OMB Control Number: 1625–0019.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners, operators, builders and agents.

Form: None.

Abstract: Certain vessels cannot comply with the International Navigation Rules (33 U.S.C. 1601) and Inland Navigation Rules (33 U.S.C. 2001). The Coast Guard thus provides an opportunity for alternative compliance. However, it is not possible to determine whether alternative compliance is appropriate, or what kind of alternative procedures might be necessary, without this collection.

Burden Estimates: The estimated burden is 180 hours a year.

2. *Title:* Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates.

OMB Control Number: 1625–0041.

Type of Request: Revision to currently approved collection to account for new optional form.

Affected Public: Owners and operators of vessels.

Form: CG–5352, CG–5352A, CG–5352B and CG–6047.

Abstract: Compliance with MARPOL 73/78 aids in the prevention of pollution from ships.

Burden Estimate: The estimated burden is 6,780 hours a year.

3. *Title:* Approval of Alterations to Marine Portable Tanks; Approval of Non-Specification Portable Tanks.

OMB Control Number: 1625–0062.

Type of Request: Extension of currently approved collection.

Affected Public: Owners of marine portable tanks and owners/designers of non-specification portable tanks.

Form: None.

Abstract: Approval by the Coast Guard of alterations to marine portable tanks ensures that the altered tank retains the level of safety to which it was originally designed. In addition, rules that allow for the approval of non-specification portable tanks ensure that innovation and new designs are not frustrated by the regulation.

Burden Estimate: The estimated burden is 18 hours a year.

4. *Title:* Voyage Planning for Tank Barge Transits in the Northeast United States.

OMB Control Number: 1625–0088.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of towing vessels.

Form: None.

Abstract: The information for a voyage plan will provide a mechanism for assisting vessels towing tank barges to identify those specific risks, potential equipment failures, or human errors that may lead to accidents.

Burden Estimates: The estimated burden is 420 hours a year.

5. *Title:* Sewage and Graywater Discharge Records for Certain Cruise Vessels Operating on Alaskan Waters.

OMB Control Number: 1625–0092.

Type of Request: Extension of currently approved collection.

Affected Public: Owners, operators, and masters of vessels.

Form: None.

Abstract: Title 33 CFR Part 159 Subpart E prescribe regulations governing the discharge of sewage and graywater from cruise vessels, requires sampling and testing of sewage and graywater discharges, and establishes reporting and recordkeeping requirements.

Burden Estimates: The estimated burden is 910 hours a year.

Dated: August 18, 2004.

Clifford I. Pearson,

Assistant Commandant for C4 and Information Technology.

[FR Doc. 04–19450 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2001–10486]

Approval of Ballast Water Treatment Systems; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice with request for comments; correction.

SUMMARY: The Coast Guard is correcting a notice with request for comments that appeared in the **Federal Register** of August 5, 2004 (69 FR 47453). The notice with request for comments seeks consultation with all interested and affected parties in establishing a program to approve ballast water treatment systems. This correction clarifies the notice.

DATES: This correction is effective on July 28, 2004.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Bivan Patnaik, Project Manager, Environmental Standards Division, Coast Guard, telephone 202–267–1744, e-mail: *bpatnaik@comdt.uscg.mil*. If you have questions on viewing the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: The Coast Guard's Approval of Ballast Water Treatment Systems notice (FR Doc. 04–17827) appearing on page 47454 of the **Federal Register** of Thursday, August 5, 2004, the following correction is made:

On page 47454, in the **FOR FURTHER INFORMATION CONTACT** section change telephone number ''(202) 267–0995'' to ''(202) 267–1744''.

Dated: August 19, 2004.

Steve Venckus,

Chief, Office of Regulations & Administrative Law, Office of the Judge Advocate General, U.S. Coast Guard.

[FR Doc. 04–19452 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–06]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2004–2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2004–2). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder Information Package (BIP) will be available to qualified bidders on or about August 23, 2004. Bids for the loans must be submitted on the bid date, which is currently scheduled for September 15, 2004. HUD anticipates that awards will be made on or before September 17, 2004. Closings are expected to take place on September 22, 2004.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm*. The executed documents must be mailed and faxed to KEMA Advisors, Inc., HUD's transaction specialist for the sale, at 1400 K Street, NW., Suite 950, Attention: MHLS 2004–2 Sale Coordinator, fax: (202) 464–3047.

FOR FURTHER INFORMATION CONTACT: Myrna Gordon, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451

Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2625, extension 3369 or Gregory Bolton, Senior Attorney, Office of Insured Housing, Multifamily Division, Room 9230; telephone (202) 708–0614, extension 5245. Hearing or speech-impaired individuals may call (202) 708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2004–2 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised of performing and nonperforming mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into several mortgage loan pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan.

The Bidding Process

The BIP will describe in detail the procedure for bidding in MHLS 2004–2. The BIP will also include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan.

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur on September 22, 2004.

These are the essential terms of sale. The Loan Sale Agreement, which will be included in the BIP, will contain additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP will describe the due diligence process for reviewing loan files in MHLS 2004–2. Qualified bidders will be able to access loan information at a due diligence facility or remotely via a high speed Internet connection. Further information on performing due diligence review of the Mortgage Loans will be provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2004–2 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans. Pursuant to the Multifamily Mortgage Sale Regulations, 24 CFR 290.30 *et seq.*, the Mortgage Loans will be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD is unaware of any Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which very-low income tenants reside who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2004–2:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to title 24 of the Code of Federal Regulations, part 24;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2004–2;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2004–2;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2004–2;

(7) Any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD on or before August 31, 2004, audited financial statements for 1998 through 2003 for a project securing a Mortgage Loan; and

(8) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before August 31, 2004.

In addition, any entity or individual that served as a loan servicer or performed other services for or on behalf of HUD at any time during the 2-year period prior to August 31, 2004, with respect to any Mortgage Loan is ineligible to bid on such Mortgage Loan. Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2004–2.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2004–2, including, but not limited to, the identity of any bidder and their bid price or bid percentage for any pool of loans or individual loan within a pool of loans, upon the completion of the sale. Even if HUD elects not to publicly disclose any information relating to MHLS 2004–2, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2004–2, and does not establish HUD's policy for the sale of other mortgage loans.

Dated: August 18, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 04–19382 Filed 8–24–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Truckee River Operating Agreement, California and Nevada

[DES 04–44]

AGENCY: Department of the Interior.

ACTION: Notice of availability for a revised draft environmental impact statement/environmental impact report and notice of open house meetings and public hearings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the California Environmental Quality Act (CEQA), the U.S. Department of the Interior (Interior) and California Department of Water Resources (DWR), as co-lead agencies, have jointly prepared a revised draft environmental impact statement/environmental impact report (revised Draft EIS/EIR) for the Draft Truckee River Operating Agreement (TROA) which would implement Section 205(a) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, Title II of Public Law 101–618 (Settlement Act). The revised Draft EIS/EIR has evaluated the proposed action (TROA Alternative), Local Water Supply Alternative, and No Action Alternative. Implementation of the proposed action would not result in any significant environmental effects.

DATES: Written comments on the revised draft EIS/EIR should be submitted to the Bureau of Reclamation (Reclamation) at the address below no later than October 29, 2004.

See **SUPPLEMENTARY INFORMATION** section for dates for open house meetings and public hearings.

ADDRESSES: Written comments on the revised Draft EIS/EIR should be mailed to Kenneth Parr, Bureau of Reclamation, 705 North Plaza St., Rm. 320, Carson City, NV 89701. All comments sent to Reclamation will be compiled for consideration by the co-lead agencies.

A copy of the document may be obtained by writing to Reclamation at the above address or by calling Reclamation at 800–742–9474 (enter 26) or 775–882–3436 or DWR at 916–227–7606. The revised Draft EIS/EIR is accessible from the following Web site: *http://www.usbr.gov/mp/troa/.* See **SUPPLEMENTARY INFORMATION** section for where the revised Draft EIS/EIR is available for public review.

See **SUPPLEMENTARY INFORMATION** section for addresses of open house meetings and public hearings.

FOR FURTHER INFORMATION CONTACT: Kenneth Parr, Reclamation, telephone 775–882–3436, TDD 775–882–3436, fax 775–882–7592, e-mail: *kparr@mp.usbr.gov;* or Michael Cooney, DWR, telephone 916–227–7606, fax 916–227–7600, e-mail: *mikec@water.ca.gov.* Information is also available at the Bureau of Reclamation Web site at: *http://www.usbr.gov/mp/troa/.*

SUPPLEMENTARY INFORMATION:

Open House Meetings Dates and Locations

Open house meetings will be held to present information about the revised Draft EIS/EIR at the locations and times listed below:

Dates:

- Tuesday, September 21, 2004, 1–4 p.m., Fernley, NV.
- Tuesday, September 21, 2004, 7–10 p.m., Reno, NV.
- Wednesday, September 22, 2004, 7–10 p.m., Fallon, NV.
- Thursday, September 23, 2004, 1–4 p.m., Kings Beach, CA.
- Thursday, September 23, 2004, 7–10 p.m., Truckee, CA.
- Friday, October 1, 2004, 6–9 p.m., Nixon, NV.

Addresses:

- Fernley, NV—City of Fernley, Council Chambers, 595 Silver Lace Blvd.
- Reno, NV—Washoe County Department of Water Resources, 4930 Energy Way.
- Fallon, NV—Fallon Convention Center, 100 Campus Way.
- Kings Beach, CA—North Tahoe Conference Center, 8318 North Lake Blvd.
- Truckee, CA—Parks and Recreation Community Center, 10046 Church Street.
- Nixon, NV—Pyramid Lake Tribal Council Chambers, 210 Capitol Hill.

Public Hearings Dates and Locations

Formal public hearings on the environmental document are scheduled for the locations and dates listed below.

Dates:

- Monday, October 18, 2004, 7–10 p.m., Reno, NV.
- Tuesday, October 19, 2004, 1–4 p.m., Fernley, NV.
- Tuesday, October 19, 2004, 6–9 p.m., Nixon NV.
- Wednesday, October 20, 2004, 1–4 p.m., Kings Beach, CA.
- Wednesday, October 20, 2004, 7–10 p.m., Truckee, CA.
- Thursday, October 21, 2004, 7–10 p.m., Fallon, NV.

Addresses:

- Reno, NV—Washoe County Dept. of Water Resources, 4930 Energy Way.
- Fernley, NV—City of Fernley, Council Chambers, 595 Silver Lace Blvd.
- Nixon, NV—Pyramid Lake Tribal Council Chambers, 210 Capitol Hill.
- Kings Beach, CA—North Tahoe Conference Center, 8318 North Lake Blvd.
- Truckee, CA—Parks and Recreation Community Center, 10046 Church St.
- Fallon, NV—Fallon Convention Center, 100 Campus Way.

Organizations and individuals may present oral or written comments at the public hearings by signing up when arriving at the hearing.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves

as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Copies of the Revised Draft EIS/ are Available for Public Review at:

- California Department of Water Resources, Central District, 3251 S Street, Sacramento, CA 95816.
- Bureau of Reclamation, Public Affairs Office, 2800 Cottage Way, Sacramento, CA 95825.
- Bureau of Reclamation, 705 North Plaza Street, Carson City, NV 89701.
- Fish and Wildlife Service, 1340 Financial Blvd, Rm. 234, Reno, NV 89502.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001.
- At various county libraries; please call 800–742–9474 (enter 26) for specific locations.

TROA Background:

Section 205(a) of the Settlement Act directs the Secretary of the Interior (Secretary), in conjunction with others, to negotiate an operating agreement governing operation of Federal Truckee River reservoirs and other specified matters. Interior, U.S. Department of Justice, States of California and Nevada, Pyramid Lake Paiute Tribe, Sierra Pacific Power Company, Truckee Meadows Water Authority, and other entities in California and Nevada completed a draft agreement (*i.e.*, Draft TROA) in October 2003. Draft TROA is available as an appendix to the revised Draft EIS/EIR or viewed at *http://www.usbr.gov/mp/troa/docs/TROAdraft.pdf*.

TROA would, in part, (1) Enhance conditions for the threatened Lahontan cutthroat trout and endangered cui-ui in the Truckee River basin; (2) increase municipal and industrial (M&I) drought protection for Truckee Meadows (Reno-Sparks metropolitan area); (3) improve Truckee River water quality downstream from Sparks, Nevada; and (4) enhance streamflows and recreational opportunities in the Truckee River basin. At the time TROA takes effect, the Settlement Act provides that a permanent allocation between California and Nevada of water in the Lake Tahoe, Truckee River and Carson River basins will also take effect. Allocation of those waters has been a long-standing issue between the two States; implementation of TROA resolves that issue. In addition, Section 205 of the Settlement Act requires that TROA, among other things, implement the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement (PSA) and ensure that water is stored and released from Federal Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee River General Electric decree. PSA is a 1989 agreement between Sierra Pacific Power Company and the Pyramid Lake Paiute Tribe to change the operation of Federal reservoirs and Sierra Pacific's exercise of its Truckee River water rights to (1) Improve spawning conditions for threatened and endangered fish species (cui-ui and Lahontan cutthroat trout) and (2) provide additional M&I water for Truckee Meadows during drought situations.

Before TROA can be approved by the Secretary and the State of California, potential environmental effects of the agreement must be analyzed pursuant to NEPA and CEQA. Accordingly, Interior and DWR have jointly prepared this revised Draft EIS/EIR for that purpose. A Draft EIS/EIR based on an earlier draft agreement was initially prepared and released for public review in February 1998. Since then, ongoing negotiations have substantially modified the proposed agreement, resulting in the need to prepare a revised Draft EIS/EIR.

Current Activities

Following the public release of Draft TROA in October 2003 by the negotiators, a revised Draft EIS/EIR was completed. The revised Draft EIS/EIR considers current conditions as well as three alternatives: (1) No Action Alternative (current management in the future, without TROA); (2) Local Water Supply Alternative (current management in the future with modified water sources, without TROA); and (3) TROA (changed management in the future). Section 205 of the Settlement Act also requires that TROA, once approved, be issued as a Federal Regulation. A draft regulation is being prepared for publication in the **Federal Register** at a later date to solicit public comment. Comments on the revised Draft EIS/EIR will be addressed in the final environmental analysis of TROA, together with any changes thereto, and a Final EIS/EIR will be published. Comments received on provisions of Draft TROA will be forwarded to the negotiators. The Secretary cannot sign TROA until a Record of Decision has been completed. The State of California cannot sign TROA until it has considered and certified a Final EIS/EIR in conjunction with making any necessary findings pursuant to CEQA. These and other steps, including approval by the Orr Ditch and Truckee River General Electric Courts, must be completed before TROA may be implemented.

Description of Alternatives

No Action Alternative (No Action):

Under No Action, Truckee River reservoir operations would remain unchanged from current operations and would be consistent with existing court decrees, agreements, and regulations that currently govern surface water management (*i.e.*, operating reservoirs in the Truckee River and Lake Tahoe basins and maintaining stream flows) in the Truckee River basin. Truckee Meadows Water Authority's (TMWA) existing programs for surface water rights acquisition and groundwater pumping for M&I use would continue. Groundwater pumping and water conservation in Truckee Meadows, however, would satisfy a greater proportion of projected future M&I demand than under current conditions. Groundwater pumping in California would also increase to satisfy a greater projected future M&I demand.

Local Water Supply Alternative (LWSA):

All elements of Truckee River reservoir operations, river flow management, Truckee River hydroelectric plant operations, minimum reservoir releases, reservoir spill and precautionary release criteria, and water exportation from the upper Truckee River basin and Lake Tahoe basin under LWSA would be the same as described under No Action. The principal differences between No Action and LWSA would be the source of water used for M&I purposes, extent of water conservation, implementation of a groundwater recharge program in Truckee Meadows, and assumptions regarding governmental decisions concerning approval of new water supply proposals.

TROA Alternative (TROA):

TROA would modify existing operations of all designated reservoirs to enhance coordination and flexibility while ensuring that existing water rights are served and flood control and dam safety requirements are met. TROA would incorporate, modify, or replace various provisions of the Truckee River Agreement (TRA) and the Tahoe-Prosser Exchange Agreement (TPEA). As proposed by the U.S., TROA would supersede all requirements of any agreements concerning the operation of all reservoirs, including those of TRA and TPEA, and would become the sole operating agreement for all designated reservoirs.

All reservoirs would continue to be operated under TROA for the same purposes as under current operations

and with most of the same reservoir storage priorities as under No Action and LWSA. The Settlement Act requires that TROA ensure that water is stored and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee General Electric decree, except for those rights that are voluntarily relinquished by the parties to the PSA, or by any other persons or entities, or which are transferred pursuant to State law.

The primary difference between TROA and the other alternatives is that TROA would provide opportunities for storing and managing various categories of credit water, not provided for in the current operation of the system. Signatories to TROA generally would be allowed to accumulate credit water in storage by retaining or capturing water in a reservoir that would have otherwise been released from storage or passed through the reservoir to serve a downstream water right (*e.g.*, retaining Floriston Rate water that would have been released to serve an Orr Ditch decree water right). In cases with a change in the place or type of use, such storage could take place only after a transfer in accordance with applicable state water law. Once accumulated, credit water would be classified by category with a record kept of its storage, exchange, and release. Credit water generally would be retained in storage or exchanged among the reservoirs until needed and released to satisfy its beneficial use. The Interim Storage Agreement (negotiated in accordance with Section 205(b)(3) of the Settlement Act) would no longer be necessary and so would be superseded by new storage agreements between the Bureau of Reclamation and TROA signatories.

In addition to credit water, TROA also establishes criteria for new wells in the Truckee River in California to minimize short-term reduction in stream flow, provides for the implementation of the interstate allocation between California and Nevada, provides for the settlement of litigation, establishes a habitat restoration fund for the Truckee River, and establishes more strict conditions and approval requirements for pumping or siphoning water from Lake Tahoe, among other benefits.

Dated: August 18, 2004.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 04–19417 Filed 8–24–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Recovery Plan for the Zapata bladderpod (*Lesquerella thamnophila*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the Final Recovery Plan for the Zapata bladderpod (*Lesquerella thamnophila*).

ADDRESSES: Persons wishing to receive the Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338 (6300 Ocean Dr.), Corpus Christi, Texas, 78412.

FOR FURTHER INFORMATION CONTACT: Field Office Supervisor, Corpus Christi Ecological Services Field Office, at the above address; telephone 361/994–9005, facsimile 361/994–8262.

SUPPLEMENTARY INFORMATION:

Background

The Zapata bladderpod (*Lesquerella thamnophila*), a plant of the Brassicaceae family, is listed as endangered with critical habitat. Historically, eleven populations of the plants have been located and described in Texas, and one has been documented from Mexico. Currently, seven of those eleven populations are still known to be extant; four of the populations are located in Starr County, and three in Zapata County. This species is threatened by increased urban development, highway construction, increased oil and gas activities, alteration and conversion of native plant communities to improved pastures, overgrazing, and vulnerability from low population size. The plant may have a more extensive range than what is currently known, as access for surveying on private land has been limited.

This Recovery Plan includes information about the species and provides objectives and actions needed to downlist the species to threatened status. The Recovery Plan identifies specific information gaps that need to be filled in order to develop delisting criteria. Recovery activities designed to achieve reclassification objectives include: Protecting known populations, searching for additional populations, performing outreach activities to educate and obtain assistance from the general public to conserve the species and its habitat, and establishing additional populations through reintroduction in the known range of the species. Binational collaboration between the United States and Mexico for species recovery is recommended. Revision of the Recovery Plan and development of delisting criteria is recommended within five years.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The U.S. Fish and Wildlife Service is the principal Federal agency responsible for conserving, protecting, and enhancing fish and wildlife and their habitats for the continuing benefit of the American people. The Service manages the 93-million-acre National Wildlife Refuge System comprising more than 500 national wildlife refuges, thousands of small wetlands, and other special management areas. It also operates 66 national fish hatcheries and 78 ecological services field stations. The agency enforces Federal wildlife laws, administers the Endangered Species Act, manages migratory bird populations, restores nationally significant fisheries, conserves and restores wildlife habitat such as wetlands, and helps foreign governments with their conservation efforts. It also oversees the Federal Aid program that distributes hundreds of millions of dollars in excise taxes on fishing and hunting equipment to state wildlife agencies.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 26, 2004.

Geoffrey L. Haskett,

Acting Regional Director, Region 2.

[FR Doc. 04–19426 Filed 8–24–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan Revision, Final Environmental Impact Statement, Petrified Forest National Park, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement for the General Management Plan Revision, Petrified Forest National Park.

SUMMARY: Pursuant to National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of Final Environmental Impact Statement for the General Management Plan Revision, Petrified Forest National Park, Arizona.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the Final Environmental Impact Statement.

ADDRESSES: Copies of the draft Environmental Impact Statement and General Management Plan Revision are available from Lee Baiza, Superintendent, Petrified Forest National Park, P.O. Box 2217, Petrified Forest National Park, Arizona 86028, (928)524–6228. The plan is also available on the Internet at: *http://planning.nps.gov/plans.cfm*.

Public reading copies of the document will be available for review at the following locations:

Petrified Forest National Park, P.O. Box 2217, Petrified Forest National Park, Arizona 86028, Telephone: (928) 524–6228.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 987–6671.

FOR FURTHER INFORMATION CONTACT: Superintendent, Petrified Forest National Park, at the above address and telephone number.

Dated: May 5, 2004.

Michael D. Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 04–19392 Filed 8–24–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement for General Management Plan; Middle and South Forks Kings River Wild and Scenic River Comprehensive Management Plan; North Fork Kern River Wild and Scenic River Comprehensive Management Plan; Sequoia and Kings Canyon National Parks Tulare and Fresno Counties, CA; Notice of Extension of Public Comment Period

SUMMARY: Pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement assessing potential impacts of alternative approaches for future management of Sequoia and Kings Canyon National Parks, in central California. The original public comment period has been extended an additional two months from the original August 5, 2004 deadline.

SUPPLEMENTARY INFORMATION: Interested individuals, organizations, and agencies are encouraged to provide written comments—to be considered any response must now be postmarked (or electronically transmitted) no later than October 6, 2004.

All responses should be addressed to the Superintendent, Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, CA 93271 (or submitted by e-mail to *Susan_Spain@nps.gov*). If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

To obtain a copy of the DEIS please contact the park at (559) 565–3101. Ten public meetings will be held throughout the state from July 14 to July 22; full details are available by phone or via the internet at *http://www.nps.gov/seki/pphtml/documents.html,* click on Management Documents.

Dated: July 14, 2004.

Martha K. Leicester,

Deputy Regional Director, Pacific West Region.

[FR Doc. 04–19391 Filed 8–24–04; 8:45 am]

BILLING CODE 4312–F6–P

DEPARTMENT OF THE INTERIOR

National Park Service

White-Tailed Deer Management Plan, Environmental Impact Statement, Catoctin Mountain Park, Maryland

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the White-tailed Deer Management Plan, Catoctin Mountain Park.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement for a White-tailed Deer Management Plan for Catoctin Mountain Park. The purpose of this action is to develop a range of alternatives for white-tailed deer management that supports forest regeneration providing for long-term protection, conservation, and restoration of native species and cultural resources. Management of white-tailed deer is needed because the white-tailed deer population in the park has been continually increasing, and browsing by large number of deer in Catoctin Mountain Park could adversely affect park resources and natural processes such as species of special concern, forest regeneration, and cultural landscapes.

Preliminary alternatives to meet these objectives include fencing and repellents, reproductive control, direct reduction, a special public hunt, and a combination of these management strategies. A no action alternative will also be analyzed.

DATES: The Park Service will accept comments from the public until September 24, 2004. In addition, the National Park Service intends to conduct public scoping meetings in the Catoctin Mountain Park area. Please check local newspapers, the park's Web site (*http://www.nps.gov/cato*) or contact the name listed below to find out when and where these meetings will be held.

ADDRESSES: Information will be available for public review and comment at the Catoctin Mountain Park Visitor Center at 6602 Foxville Road (intersection of Maryland Route 77 and Park Central Road).

FOR FURTHER INFORMATION CONTACT: Scott Bell, Environmental Protection Specialist, Catoctin Mountain Park, (301) 416–0536. A scoping brochure has been prepared that details the issues identified to date, and possible alternatives to be considered. Copies of that information may be obtained from the Scott Bell, Environmental Protection Specialist, Catoctin Mountain Park, 6602 Foxville Road, Thurmont, Maryland 21788, (301) 416–0536, or Catoctin Mountain Park's Web site (*http://www.nps.gov/cato*).

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Resource Management, Catoctin Mountain Park, 6602 Foxville Road, Thurmont, Maryland 21788. You may also comment via the Internet at *http://parkplanning.nps.gov*. Please submit Internet comments as a text file avoiding the use of special characters and any form of encryption. Please put in the subject line ''Deer Management'' and include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Scott Bell at the Resource Management Office at (301) 416–0536. You may also hand-deliver comments to Catoctin Mountain Park Headquarters, 6602 Foxville Road, Thurmont, Maryland 21788.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 22, 2004.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 04–19393 Filed 8–24–04; 8:45 am]

BILLING CODE 4312–59–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 9 a.m., September 10, 2004 at the King Kamehameha's Kona Beach Hotel, Marina Room, Kailua-Kona, Hawaii.

The agenda will include Adoption of By-Laws, Discussions on the Park's Authorized Boundary and the Proposed Live-In Cultural Center Workshop, and Update on Park's Projects followed by a park visit.

The meeting is open to the public. Minutes will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: July 13, 2004.

Geraldine K. Bell,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 04–19390 Filed 8–24–04; 8:45 am]

BILLING CODE 4312–GH–M

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee.

The Review Committee will meet on September 17–18, 2004, in the Four Points Sheraton Hotel, 1201 K Street, NW., Washington, DC 20005, telephone (202) 289–7600. Meeting sessions will begin at approximately 8:30 a.m. each day, and will end at approximately 5 p.m. The agenda for the meeting will include an overview of NAGPRA and related statutes, an update on various disputes and issues pending before the Review Committee; requests for recommendations regarding the disposition of culturally unidentifiable human remains; discussion of regulations; the Review Committee's 2002–2003 report to the Congress; discussion of nominees for the committee's seventh member and selection of a chair; and presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public.

To schedule a presentation to the Review Committee during the meeting, submit a written request with an abstract of the presentation and contact information. Persons also may submit written statements for consideration by the Review Committee during the meeting. Send requests and statements to the Designated Federal Officer, NAGPRA Review Committee by U.S. Mail to the National Park Service, 1849 C Street NW., (2253), Washington, DC 20240; or by commercial delivery to the National Park Service, 1201 Eye Street NW., 8th floor, Washington, DC 20005. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to Government offices, copies of mailed requests and statements should also be faxed to (202) 371–5197.

Transcripts of Review Committee meetings are available approximately 8 weeks after each meeting at the National NAGPRA Program office, 1201 Eye Street NW., Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to nagpra_info@nps.gov. Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA Website, *http://www.cr.nps.gov/nagpra;* for the Review Committee's meeting procedures, select ''Review Committee,'' then select ''Procedures.''

The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 *et seq*. Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity of cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains; consulting with Indian tribes and Native Hawaiian

organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is completed during meetings that are open to the public.

Dated: August 12, 2004.

C. Timothy McKeown,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 04–19394 Filed 8–24–04; 8:45 am]

BILLING CODE 4312–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Closure Order Establishing Prohibitions at Shasta Lake, California

ACTION: Notice of closure.

SUMMARY: *Purpose of Closure Order:* This closure is issued to provide for the protection of federal property and to ensure public safety at Reclamation facilities.

Closure Areas: The following facilities, lands, and waters are closed to the public: Shasta Dam Blvd. and Lake Blvd. roadways entering onto Reclamation property, the public parking lot immediately east of Shasta Dam, the crest of Shasta Dam, and adjacent property, building, and facilities under the control of Reclamation. The closure area includes the area within 1,000 feet upstream and 750 feet downstream of Shasta Dam for the entire width of the reservoir surface at high mean water upstream, and 750 feet on either side of the entire width of the dam downstream.

DATES AND TIMES OF CLOSURE: The entire closure area is to remain closed effective August 25, 2004, and remain closed indefinitely except as permitted as described below between the hours of 6 a.m. to 10 p.m. everyday.

ADDRESSES: A map is available for inspection at the Reclamation's Northern California Area Office, located at 16349 Shasta Dam Blvd., Shasta Lake, California, 96019.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Mid-Pacific Region Public Affairs Office at 916–978–5100.

SUPPLEMENTARY INFORMATION: *Prohibited Acts:* The following acts are prohibited in the closure area.

(A) Operating a motorized vehicle of any kind, including stopping, standing, or parking in the closure area.

Exceptions: Motor vehicles may be operated within that portion of the closure area that includes the open parking lot immediately east of Shasta Dam in compliance with all signs and other directions posted or disclosed. This limited exception to the closure order may be revoked at any time to meet operational, security, or safety concerns as determined by the area manager or his/her designee. Also excepted are Reclamation employees acting within the scope of their employment; operations, maintenance, and construction personnel that have express authorization from Reclamation; law enforcement and fire department officials; and others who have received express written authorization from Reclamation to enter the closure area.

(B) Entering the closure area on foot, on bicycle, or by any other means.

Exceptions: Pedestrians and bicyclists may enter that portion of the closure area that includes the open parking lot immediately east of Shasta Dam, the visitor's center and the walkway across the dam as part of an officially approved tour group. All persons shall comply with all signs and other directions as posted or disclosed. This limited exception to the closure order may be revoked at any time to meet operational, security, or safety concerns as determined by the area manager or his/her designee.

(C) Operating a vessel, swimming, or scuba diving.

Exceptions: Reclamation employees acting within the scope of their employment; operations, maintenance, and construction personnel that have express authorization from Reclamation; law enforcement and fire department officials; and other who have received express written authorization from Reclamation to enter the closure area.

(D) Carrying or discharging firearms.

Exceptions: Law Enforcement, *i.e.* Federal, state, and local agencies and others who have received express written authorization from Reclamation to enter the closure area.

(E) Carrying or using any other type of weapons.

(F) Fires

Exceptions: Barbeques may be used on the lawn of the closure area immediately east of Shasta Dam. This limited exception to the closure order may be revoked at any time to meet operational, security, or safety concerns as determined by the area manager or his/her designee.

(G) Vandalism or destroying, injuring, defacing, or damaging property or real property that is not under one's lawful control or possession.

This order is posted in accordance with 43 CFR 423.3(b). Violation of this prohibition or any prohibition listed in 43 CFR 423 is punishable by fine or imprisonment for not more that 6 months, or both.

Dated: August 18, 2004.

Michael J. Ryan,

Area Manager, Northern California Area Office, Mid-Pacific Region.

[FR Doc. 04–19427 Filed 8–24–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–502]

Certain Automobile Tail Light Lenses and Products Incorporating Same; Notice of Commission Determination Not To Review the Initial Determination of the Presiding Administrative Law Judge Granting Summary Determination of Non Infringement; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (ID) of the presiding administrative law judge (''ALJ'') granting summary determination of non infringement. This determination results in the termination of the above-captioned investigation. The Commission has also determined to grant complainants' motion to supplement their petition for review of the ID and to deny complainants' motion for leave to file a reply to the oppositions to their petition for review of the ID.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., telephone (202) 205–3104, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's

electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-referenced investigation on January 7, 2004, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Jens Ole Sorensen and Jens E. Sorensen, as Trustee of the Sorensen Research and Development Trust. 69 FR 937. The Commission named Daimler-Chrysler AG of Stuttgart, Bade-Wuerttemberg, Germany and Mercedes-Benz USA, LLC of Montvale, New Jersey as respondents. *Id.*

On July 9, 2004, the ALJ issued an ID granting a motion filed by respondents for summary determination of non infringement. Complainants petitioned for review of the ID on July 22, 2004. On July 28, 2004, complainants filed a motion to supplement their petition. Respondent and the Commission investigative attorney filed separate oppositions to complainants' petition for review on July 29, 2004. Complainants filed a motion for leave to file a reply to the oppositions to their petition on August 5, 2004.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.42 (h) of the Commission's Rules of Practice, 19 CFR 210.75(h).

Issued: August 20, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19408 Filed 8–24–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–493]

Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same; Notice of Commission Determination To Review a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on June 2, 2004, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 2, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Company, Inc., both of St. Louis, Missouri. 68 FR 32771 (June 2, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1–12 of U.S. Patent No. 5,464,709 (''the '709 patent''). The complaint and notice of investigation named twenty-six respondents and were later amended to include an additional firm as a respondent. The investigation has been terminated as to claims 8–12 of the '709 patent. Several respondents have been terminated from the investigation for various reasons.

On June 2, 2004, the ALJ issued his final ID finding a violation of section 337. He also recommended the issuance of remedial orders. A number of the remaining respondents have petitioned for review of the ID. Complainants and the Commission investigative attorney have filed oppositions to those petitions.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety.

On review, the Commission requests briefing based on the evidentiary record. While the Commission has determined to review the final ID in its entirety, it is particularly interested in briefing on the issues of claim construction and indefiniteness, especially with respect to the following terms of claim 1 of the '709 patent: ''said zinc anode''; ''has a gel expansion of less than 25%''; and ''after being discharged for 161 minutes to 15% depth of discharge at 2.88A''. In addressing the question of claim construction, each party should (1) Specifically identify those portions of the claim language, specification, and prosecution history (and other evidence, if appropriate) which support the construction it advocates, (2) state how the construction it advocates is supported by an adequate written description and enabling disclosure, and (3) demonstrate that the construction it advocates falls within the ambit of permissible claim construction, as opposed to impermissible redrafting of claim language. The Commission is also interested in receiving answers to the following questions:

1. With respect to the term ''after being discharged'' in claim 1, what is being discharged?

2. Whether and to what extent disclaimed claims 8–12 may be used in construing the remaining claims.

3. Whether and to what extent the prosecution history of the corresponding European patent (RX–4) may be used to construe the claims of the '709 patent.

4. What is meant by the term ''depth of discharge'' in claim 1?

5. Whether and how the asserted claims may be construed to cover rechargeable batteries.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article

from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the June 2, 2004, recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on September 3, 2004. Reply submissions must be filed no later than the close of business on September 13, 2004. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42-.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

Issued: August 19, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19407 Filed 8–24–04; 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 modified Consent Decree in *United States* v. *Holly Ridge Associates, L.L.C.*, No. 7:01–CV–36–BO(3) was lodged with the United States District Court for the Eastern District of North Carolina on August 11, 2004.

This proposed modified Consent Decree concerns a complaint filed by the United States against Defendants Holly Ridge Associates, L.L.C. and John A. Elmore, 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 modified Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and perform mitigation and to pay a civil penalty. The Consent Decree also provides for the Defendants to perform a supplemental environmental project.

The Department of Justice will accept written comments relating to this proposed modified Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Martin F. McDermott, United States Dep't of Justice, Environment & Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20226–3986 and refer to *United States* v. *Holly Ridge Associates, L.L.C.*, DJ #90–5–1–1–16618.

The proposed modified Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of North Carolina, 310 New Bern Ave., Raleigh, North Carolina 27601. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 04–19484 Filed 8–24–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed consent decree, in *United States, et al.,*v. *City of Waukegan, Illinois, et al.,* Civil No. 04 C 5172 (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois on August 11, 2004, pertaining to the Waukegan Manufactured Gas & Coke Plant Site (the ''Site''), Operable Unit #2 of the Outboard Marine Corporation Superfund Site located in Waukegan, Lake County, Illinois. The proposed consent decree would resolve the United States' civil claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against the Settling Defendants, two current owners of portions of the Site, and three former owners and operators of the Site.

Under the proposed Consent Decree Performing Settling Defendants, General Motors Corp. (''GM'') and North Shore Gas Co. (''North Shore''), are obligated to finance and perform the remedial action at the Site selected by U.S.

Environmental Protection Agency (''U.S. EPA'') in a September 1999 Record of Decision (''ROD''). The City of Waukegan, IL (the ''City'') will perform the operation and maintenance (''O&M'') portion of the remedy relating to soil cleanup at the Site using funds in an escrow account established by the Performing Settling Defendants. The Owner Settling Defendants, the City and Larsen Marine Service, Inc., are obligated to provide the access agreements and institutional controls required to implement the selected remedy. The Buyout Settling Defendant, Elgin Joliet & Eastern Railway Co., will pay GM and North Shore 10% of the cost of the remedial action, pursuant to a separate agreement among the Settling Defendants. The total cost of the remedial action is estimated to be approximately $27 million.

The Performing Settling Defendants will pay U.S. EPA's and the State of Illinois' (the ''State's'') Interim Response Costs, primarily oversight costs paid or incurred between September 2002 and the effective date of the Consent Decree. In addition, the Performing Settling Defendants will pay all U.S. EPA's Future Response Costs excluding the first $1.35 million of Future Oversight Costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States, et al.,* v. *City of Waukegan, Illinois, et al.,* Civil No. o4–C–5172 (N.D. Ill.), and DOJ Reference No. 90–11–3–07051. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Illinois, 219 South Dearborn Street, 5th Floor, Chicago, IL 60604, (312–252–1994); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Blvd., Chicago, IL 60604–3507 (contact: Susan Tennenbaum (312–886–0273)). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, U.S. Department of justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $23.50 for the consent decree only (94 pages, at 254 cents per page reproduction costs), or $123.00 for the consent decree and all appendices (492 pages), made payable to the Consent Decree Library.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–19486 Filed 8–24–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *Yellowstone Mountain Club, LLC, et al.,* No. CV 04–58–BU–RWA, (D. Mt.) was lodged with the United States District Court for the District of Montana on August 9, 2004.

This proposed Consent Decree concerns a complaint filed by the United States against Yellowstone Mountain Club, LLC, Yellowstone Development, LLC, Blixseth Group, Inc. and The Ranches of Yellowstone Club, LLC pursuant to section 309(b) and (d) of the Clean Water Act (''CWA''), 33 U.S.C. 1319 (b) and (d), 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 the Defendants to restore impacted areas, perform mitigation and to pay a civil penalty.

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 Leif Johnson, Assistant United States Attorney, P.O. Box 1478, Billings, Montana 59103 and refer to *United States of America* v. *Yellowstone Mountain Club, LLC, et al.* and DJ # 90–5–1–1–16831.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Montana, Butte Division, 303 Federal Building, 400 North Main St., Butte, Montana 59701. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

Scott Schachter,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 04–19485 Filed 8–24–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,573]

Cooper Wiring Devices—Georgetown, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 29, 2001, applicable to workers of Cooper Wiring Devices, Assembly Department, Georgetown, South Carolina. The notice was published in the **Federal Register** on September 11, 2001 (66 FR 47241). The certification was amended on March 8, 2002 to include all workers of the Georgetown, South Carolina location of the subject firm. The notice was published in the **Federal Register** on April 22, 2002 (67 FR 19590).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of wiring devices.

New information shows that Mr. Tony Johnson was retained at the subject firm beyond the August 29, 2003 expiration date of the certification. Mr. Johnson completed the close-down process until his termination on November 30, 2003.

Based on these findings, the Department is amending the certification to extend the August 29, 2003 expiration date for TA–W–39,573 to read November 30, 2003.

The intent of the Department's certification is to include all workers of Cooper Wiring Devices, Georgetown, South Carolina, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–39,573 is hereby issued as follows:

All workers of Cooper Wiring Devices, Georgetown, South Carolina, who became totally or partially separated from employment on or after June 27, 2000, through November 30, 2003, are eligible to

apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 19th day of August 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19413 Filed 8–24–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,515G and TA–W–53,515H]

Thomasville Furniture Industries, Inc., New Plant V, Thomasville, NC; Thomasville Furniture Industries, Inc., Old Plant V, Thomasville, NC; Amended Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 13, 2004, applicable to workers of Thomasville Furniture Industries, Inc., Plant V, New Veneer Division, Thomasville, North Carolina (TA–W–53,515G), and Thomasville Furniture Industries, Inc., Plant V, Old Veneer Division, Thomasville, North Carolina (TA–W–53,515H). The notice was published in the **Federal Register** on February 6, 2004 (69 FR 5867).

At the request of the petitioners, the Department reviewed the certification for workers of the subject facilities. New information shows that the designations ''Old Veneer Division'' and ''New Veneer Division'' within Plant V are incorrect. Rather, there is a New Plant V and an Old Plant V. The workers of both facilities are engaged in employment related to the production of veneered furniture faces used in residential wood furniture finished at other domestic Thomasville production facilities.

Based on these findings, the Department is amending the certification to include all workers of Thomasville Furniture Industries, Inc., New Plant V, Thomasville, North Carolina (TA–W–53,515G), and Thomasville Furniture Industries, Inc., Old Plant V, Thomasville, North Carolina (TA–W–53,515H).

The amended notice applicable to TA–W–53,515G and TA–W–53,515H is hereby issued as follows:

All workers of Thomasville Furniture Industries, Inc., New Plant V, Thomasville, North Carolina (TA–W–53,515G), and Thomasville Furniture Industries, Inc., Old Plant V, Thomasville, North Carolina (TA–W–53,515H), who became totally or partially separated from employment on or after November 7, 2002 through January 13, 2006 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 17th day of August, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19412 Filed 8–24–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,727]

Tyco Healthcare Kendall, Including Leased Workers of Keena Staffing Company, Park Personnel and Manpower Temporary Services, Argyle, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 5, 2004, applicable to workers of Tyco Healthcare Kendall, including leased workers of Keena Staffing Company and Park Personnel, Argyle, New York. The notice was published in the **Federal Register** on June 2, 2004 (69 FR 31137).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Manpower Temporary Services were employed at the Argyle, New York location of Tyco Healthcare Kendall.

Based on these findings, the Department is amending this certification to include leased workers of Manpower Temporary Services working at Tyco Healthcare Kendall, Argyle, New York.

The intent of the Department's certification is to include all workers employed at Tyco Healthcare Kendall, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–54,727 is hereby issued as follows:

All workers of Tyco Healthcare Kendall, Argyle, New York, including leased workers of Keena Staffing Company, Park Personnel and Manpower Temporary Services working at Tyco Healthcare Kendall, Argyle, New York, who became totally or partially separated from employment on or after April 14, 2003, through May 5, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 18th day of August, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19411 Filed 8–24–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,899]

Zilog, Inc.; Nampa, ID; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Zilog, Inc., Nampa, Idaho. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,899; Zilog, Inc. Nampa, Idaho (August 17, 2004)

Signed at Washington, DC, this 18th day of August 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–19410 Filed 8–24–04; 8:45 am]

BILLING CODE 4510–30–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Meeting of the Advisory Commission on Drug Free Communities

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of meeting.

SUMMARY: The Advisory Commission on Drug Free Communities will meet to discuss drug free communities initiatives and issues. The discussion will include remarks by the ONDCP Director, results of the Commission's previous recommendations, an update by the Drug Free Communities Support

Program Administrator, and an update on the evaluation contract.

DATES: The meeting will occur noon to 5:45 p.m., Tuesday, September 28, 2004, and 8:30 a.m. to 3:30 p.m., Wednesday, September 29, 2004. The period for public comment will occur 12:45 p.m. to 1:15 p.m., Wednesday, September 29, 2004.

ADDRESSES: The meeting will occur at the Office of National Drug Control Policy, 5th Floor Conference Room, 750 17th Street, NW., Washington, DC 20503. To register call Carlos Dublin at (202) 395–6762.

FOR FURTHER INFORMATION CONTACT: Linda Priebe (202) 395–6622.

Dated: August 20, 2004.

Daniel R. Petersen,

Assistant General Counsel.

[FR Doc. 04–19487 Filed 8–24–04; 8:45 am]

BILLING CODE 3180–02–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a Firefly aircraft on a solo flight to the South Pole. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 24, 2004. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed Antarctic Waste Regulations, 45 CFR part 671, that requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica.

The waste permit applications received are as follows:

1. *Applicant:* Gustavus A. McLeod, 21717 Glendalough Road, Gaithersburg, MD 20882. Permit Application No. 2005 WM–002.

Activity for Which Permit is Requested: The applicant is an aviator and leader of an expedition to fly to the South Pole and Makes this application for a Waste Management Permit for the use and release of designated pollutants. The applicant plans to fly solo in a Firefly aircraft from South America, land at Marambio Station to refuel, then fly round-trip to South Pole returning to Marambio, then onward to South America. Other than Marambio Station the applicant does not plan to make other landings in Antarctica and will not establish any camps.

Location: Antarctic continent.

Dates: November 1, 2004 to February 15, 2005.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04–19395 Filed 8–24–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, August 31, 2004.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is Open to the public.

MATTER TO BE CONSIDERED: 7654 *Highway-Marine Accident Report*—U.S. Towboat Robert Y. Love Allision with the I–40 Highway Bridge near Webbers Falls, Oklahoma, May 26, 2002.

New Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, August 27, 2004.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: August 20, 2004.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 04–19504 Filed 8–23–04; 9:01 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Revision 9 of NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors;'' Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Revision 9 of NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors,'' which provides policy and guidance for the development, administration, and grading of written examinations and operating tests used to determine the qualifications of individuals who apply for reactor operator (RO) and senior reactor operator (SRO) licenses at nuclear power plants pursuant to the Commission's regulations in 10 CFR part 55, ''Operators' Licenses.'' NUREG–1021 also provides guidance for verifying the continued qualifications of licensed operators when the staff determines that NRC requalification examinations are necessary.

NUREG–1021 has been revised to implement a number of clarifications and enhancements that have been identified since Revision 8, Supplement 1, was published in April 2001. A draft of Revision 9 was issued for comment and voluntary trial use on February 3, 2003 (68 FR 5312), and seven responses were received during the comment period, which closed on December 31, 2003. The public comments and recommendations, as well as others that were provided by the NRC regional offices and staff, are available for review via the NRC's Public Electronic Reading Room (*http://www.nrc.gov/reading-rm/adams.html*) and in the NRC's Public Document Room located at 11555 Rockville Pike, Rockville, Maryland; the Accession Number for the comment summary is ML041240004.

Revision 9 includes a number of changes that the NRC staff believes will maintain operational safety and public confidence, while reducing the regulatory burden on facility licensees and improving efficiency: notably, the RO written examination has been shortened from 100 to 75 questions, the design of the 100-question SRO written examination has been clarified and simplified, the administrative and systems portions of the walk-through operating test have been combined and reapportioned, and the grading criteria for the simulator operating test have been clarified to enhance consistency. A number of additional changes have been made to address questions raised since Revision 8, Supplement 1, was issued and to conform with other regulatory activities. The changes in Revision 9 are outlined in the Executive Summary, and the new or revised text is identified with vertical lines in the margins.

Revision 9 will become effective for operator licensing examinations that are administered 180 or more days after the date of this notice, or at an earlier date agreed upon by the facility licensee and its NRC Regional Office. After the effective date, facility licensees that elect to prepare their examinations will be expected do so based on the guidance in Revision 9 of NUREG–1021, unless the NRC has reviewed and approved the facility licensee's alternative examination procedures.

Copies of Revision 9 are being mailed to the plant or site manager at each nuclear power facility regulated by the NRC. A copy is available for inspection and/or copying for a fee in the NRC's Public Document Room, located at 11555 Rockville Pike, Rockville, Maryland. NUREG–1021 is also available for downloading from the NRC's Web site (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1021/*). If you do not have electronic access to NRC documents, you may request a single copy of Revision 9 by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (facsimile: 301–512–2289). Telephone requests cannot be accommodated. NUREG documents are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 18th day of August 2004.

For the Nuclear Regulatory Commission.

David C. Trimble,

Chief, Operator Licensing and Human Performance Section, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–19403 Filed 8–24–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 2) EA–03–097]

In the Matter of All Independent Spent Fuel Storage Installation Licensees Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of order for implementation of additional security measures associated with access authorization.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of all independent spent fuel storage installation licensees order modifying license (effective immediately).

II. Further Information

I

The licensees identified in Attachment 2 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing the operation of Independent Spent Fuel Storage Installation (ISFSI) facilities in accordance with the Atomic Energy Act of 1954 and Title 10 of the Code of Federal Regulations (10 CFR) part 50 and/or 10 CFR part 72. Commission regulations at 10 CFR 72.184 and 10 CFR 72.212 require these licensees to have a safeguards contingency plan to respond to threats of radiological sabotage, and to protect the spent fuel against the threat of radiological sabotage.

Inasmuch as an insider has an opportunity equal to or greater than any other person to commit radiological sabotage, the Commission has determined these measures to be prudent. This Order is being issued to all licensees who currently store spent fuel or have identified near term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating independent spent fuel storage installations to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order in response to previously issued advisories, the October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures and these measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.40 and 10 CFR 72.210 to the licensees identified in Attachment 2 to this Order shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety and interest require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72 and 73, *it is hereby ordered*, effective immediately, that all licenses identified in Attachment 2 to this order is modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than 180 days from the date of this Order with the exception of the additional security measures B.4, which shall be implemented no later than 365 days from the date of this Order, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. Any licensee that considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required under Condition B.1.

C. 1. All licensees shall, within twenty (20) days of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. All licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.186 and 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise. Licensee's response to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21. The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region I, II, III or IV as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 18th day of August, 2004.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Attachment 2 To Order Independent Spent Fuel Storage Installation Addressee List

James E. Ellis, Manager, Morris Operation, General Electric Company, GE Morris Operation Plant, Docket No. 72–1, 7555 East Collins Road, Morris, IL 60450–9740.

David A. Christian, Senior Vice President and Chief Nuclear Officer, Virginia Electric and Power Company, Surry Power Station, Units 1 and 2, Docket No. 72–2, Innsbrook Technical Center, 5000 Dominion Boulevard, Glen Allen, VA 23060–6711.

J. W. Moyer, Senior Vice President and Chief Nuclear Officer, Progress Energy, H. B. Robinson Steam Electric Plant, Unit 2, Docket No. 72–3,3581 West Entrance Road, Hartsville, NC 29550.

Henry B. Barron, Group Vice President Nuclear Generation and Chief Nuclear Officer, Duke Power Company, Oconee Nuclear Station, Units 1, 2 and 3, Docket No. 72–4, 526 South Church Street, EC07H, P.O Box 1006 (28201–1006), Charlotte, NC 28202.

John Paul Cowan, Executive Vice President and Chief Nuclear Officer, Nuclear Management Company, LLC, Point Beach Nuclear Plant, Units 1 and 2, Docket No. 72–5, 700 First Street, Hudson, WI 54016.

John Paul Cowan, Executive Vice President and Chief Nuclear Officer, Nuclear Management Company, LLC, Palisades Nuclear Plant, Docket No. 72–7, 700 First Street, Hudson, WI 54016.

George Vanderheyden, Vice President, Calvert Cliffs Nuclear Power Plant, Inc. Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Docket No. 72–8, 1650 Calvert Cliffs Parkway, Lusby, MD 20357–4702.

Elizabeth D. Sellers, Manager, INEEL c/o Deeann Long-Security, U.S. DOE, Idaho Operations Office, South, Fort Saint Vrain Power Station, Docket No. 72–9, 785 DOE Place, Mailstop 1170, Idaho Falls, ID 83401–1203,

John Paul Cowan, Executive Vice President and Chief Nuclear Officer, Nuclear Management Company, LLC, Prairie Island Nuclear Generating Plant, Docket No. 72–10, 700 First Street, Hudson, WI 54016.

Steve Redecker, Plant Manager, Rancho Seco Nuclear Generating Station, Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station, Docket No. 72–11, 14440 Twin Cities Road, Herald, CA 95638–9799,

Michael Kansler, President, Entergy Nuclear Operations, Inc. James A. FitzPatrick Nuclear Power Plant, Docket No. 72–12, 440 Hamilton Avenue, White Plains, NY 10601.

Jeffrey S. Forbes, Site Vice President, Entergy Nuclear Operations, Inc., Arkansas Nuclear One, Units 1 and 2, Docket No. 72–13, 1448 S. R. 333, Russelville, AR 72802.

Gary Leidich, Vice President, First Energy, Davis-Besse Nuclear Power Station, Docket No. 72–14, 76 S. Main Street, Akron, OH 44308.

Christopher M. Crane, President and Chief Nuclear Officer, Exelon Generation Company, LLC, Oyster Creek Nuclear Generating Station, Docket No. 72–15, 4300 Winfield Road, Warrenville, IL 60555.

David A. Christian, Senior Vice President and Chief Nuclear Officer, Virginia Electric and Power Company, North Anna Power Station, Docket No. 72–16, Innsbrook Technical Center, 5000 Dominion Boulevard, Glen Allen, VA 23060–6711.

Stephen M. Quennoz, Vice President Power Supply Generation, Portland General Electric Company, Trojan Nuclear Power Plant, Docket No. 72–17, 121 South West Salmon Street, Portland, OR 97204.

Elizabeth D. Sellers, Manager, INEEL, c/o Deeann Long-Security, US DOE, Idaho Operations Office, South, Three Mile Island Power Station, Unit 2, Docket No. 72–20, 785 DOE Place, Mailstop 1170, Idaho Falls, ID 83401–1203.

Bryce L. Shriver, Senior Vice President and CNO, Susquehanna Steam Electric Company, Susquehanna Steam Electric Station, Units 1 and 2, Docket No. 72–28, 2 North Ninth Street, Allentown, PA 18101.

Christopher M. Crane, President and CNO, Exelon Generation Company, LLC, Peach Bottom Atomic Power Station, Units 2 and 3, Docket No. 72–29, 4300 Winfield Road, Warrenville, IL 60555.

Michael Meisner, Chief Nuclear Officer, Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station, Docket No. 72–30, 321 Old Ferry Road, Wiscasset, ME 04578–4922.

Richard Kackick, Chief Nuclear Officer, Yankee Atomic Electric Company, Yankee Rowe Nuclear Power Station, Docket No. 72–31, 19 Midstate Drive, Suite 200, Auburn, MA 01501.

John Paul Cowan, Executive Vice President and Chief Nuclear Officer, Nuclear Management Company, LLC, Duane Arnold Energy Center, Docket No. 72–32, 700 First Street, Hudson, WI 54016.

Karl Singer, Chief Nuclear Officer, Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2, Docket No. 72–34, 1101 Market Street 6A Lookout Place, Chattanooga, TN 37402–2801.

J.V. Parrish, Chief Nuclear Officer, Energy Northwest MD 1023, Columbia Generating Station, Docket No. 72–35, Snake River Warehouse North Power Loop, Richland, WA 99352.

Louis Sumner, Site Vice President, Southern Nuclear Operating Company, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Docket No. 72–36, 40 Inverness Center Parkway, Birmingham, AL 35242.

Christopher M. Crane, President and Chief Nuclear Officer, Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3, Docket No. 72–37, 4300 Winfield Road, Warrenville, IL 60555.

Henry B. Barron, Group Vice President Nuclear Generation and Chief Nuclear Officer, Duke Power Company, William B. McGuire Nuclear Station, Units 1 and 2, Docket No. 72–38, 526 South Church Street, EC07H, P.O Box 1006 (28201–1006), Charlotte, NC 28202.

Wayne A. Norton, President, Connecticut Yankee Atomic Power Company, Haddam Neck Nuclear Plant, Docket No. 72–39, 362 Injun Hollow Road, East Hampton, CT 06424–3099.

Henry B. Barron, Group Vice President Nuclear Generation and Chief Nuclear Officer, Duke Power Company, Oconee Nuclear Station, Docket No. 72–40, 526 South Church Street, EC07H, P.O Box 1006 (28201–1006), Charlotte, NC 28202.

Harold B. Ray, Executive Vice President, Southern California Edison,

San Onofre Nuclear Station, Units 2 and 3, Docket No. 72–41, 8631 Rush Street, Rosemead, CA 91770.

Mike Stinson, Site Vice President, Southern Nuclear Operating Company, Joseph M. Farley Nuclear Plant, Units 1 and 2, Docket No. 72–42, 40 Inverness Center Parkway, Birmingham, AL 35242.

Robert A. Fenech, Senior Vice President, Nuclear, Fossil, and Hydro Operations, Consumer Energy Company, Big Rock Point Restoration Site, Docket No. 72–43, 1945 W. Parnell Road, Jackson, MI 49201.

Gregg R. Overbeck, Senior Vice President, Arizona Public Service Company, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Docket No. 72–44, 5801 South Wintersburg Road Mail Station 7602, Tonopah, AZ 85354–7529.

David A. Christian, Senior Vice President, Chief Nuclear Officer, Virginia Electric and Power Company, Millstone Power Station, Units 2 and 3, Docket No. 72–47, Innsbrook Technical Center, 5000 Dominion Boulevard, Glen Allen, VA 23060–6711.

Paul Hinnenkamp, Vice President Operations, Entergy Operations, Inc., River Bend Station, Unit 1, Docket No. 72–49, 5485 U.S. Highway 61, St. Francisville, LA 70775.

Michael Kansler, President, Entergy Nuclear Operations, Indian Point Nuclear Generating Station, Units 2 and 3, Docket No. 72–51, 440 Hamilton Avenue, White Plains, NY 10601.

Karl Singer, Chief Nuclear Officer, Tennessee Valley Authority, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Docket No. 72–52, 1101 Market Street 6A Lookout Place, Chattanooga, TN 37402–2801.

[FR Doc. 04–19404 Filed 8–24–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50221; File No. SR–NASD–2004–121]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. To Include Failures To Submit Timely Amendments to Form U5 in its Minor Rule Violation Plan

August 19, 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 August 11, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. On August 17, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] On August 19, 2004, NASD filed Amendment No. 2 to the proposed rule change.[4] 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

NASD proposes to amend NASD Interpretative Material 9216 (''IM–9216'') (Violations Appropriate for Disposition Under the Plan Pursuant to SEC Rule 19d–1(c)(2)) to expand the list of violations eligible for disposition under NASD's Minor Rule Violation Plan (''MRVP'') to include failure to submit timely amendments to Form U5, as required by Article V, Section 3(a) of the NASD By-Laws. The proposed rule filing also changes ''U–4'' to ''U4,'' to be consistent with the most recent amendments to that form. The text of the proposed rule change is available at the principal office of NASD and the Commission's Public Reference Room.[5]

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1984, the Commission adopted amendments to Rule 19d–1(c) under the Act[6] to allow a self-regulatory organization to adopt, with Commission approval, plans for the disposition of minor violations of the rules of such self-regulatory organization.[7] In 1993, pursuant to Commission Rule 19d–1(c), NASD established the MRVP for the disposition of minor violations of certain NASD rules.[8] In 2001, the Commission approved significant amendments to the MRVP[9] and, in February 2004, NASD proposed additional amendments to the MRVP.[10]

According to NASD, the MRVP provides for meaningful sanctions for minor or technical violations of certain NASD rules when the initiation of a NASD disciplinary proceeding through the NASD formal complaint process would be more costly and time-consuming than would be warranted. NASD represents that inclusion of an NASD rule in the MRVP does not mean that such rule is unimportant; rather, a minor or technical violation of such rule may be appropriate for disposition under the MRVP. NASD retains the discretion to bring full disciplinary proceedings for a minor or technical violation of such rule.

NASD Rule 9216(b) authorizes NASD to impose a fine of $2,500 or less on any member or associated person of a member for a violation of NASD rules specified in IM–9216. NASD staff reviews the number and seriousness of the violation, as well as the previous disciplinary history of the violator, to determine if a matter is appropriate for disposition under the MRVP, and, if appropriate for disposition under the MRVP, to determine the amount of the fine. Once NASD has fined an individual or a member firm for a minor or technical violation pursuant to the MRVP, NASD may, at its discretion,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (August 16, 2004) (''Amendment No. 1''). In Amendment No. 1, NASD alphabetically rearranged the contents of Exhibit 3 to the proposed rule change. Exhibit 3 included comment letters NASD received from its members with respect to the proposed rule change.

[4] *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (August 19, 2004) (''Amendment No. 2''). In Amendment No. 2, NASD made technical corrections to conform the proposed rule text with the rule text of current IM–9216.

[5] On February 10, 2004, NASD proposed additional amendments to the MRVP. *See* SR–NASD–2004–025. NASD has stated that it would amend the rule text set forth in this proposed rule change in the event the Commission approves SR–NASD–2004–025 before approval of this proposed rule change.

[6] 17 CFR 240.19d–1(c).

[7] *See* Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984).

[8] *See* NASD Rule 9216(b). *See also* Exchange Act Release No. 32076 (March 31, 1993), 58 FR 18291 (April 8, 1993); and Notice to Members 93–42 (SEC Approves NASD's Minor Rule Violation Plan) (July 1993).

[9] *See* Exchange Act Release No. 44512 (July 3, 2001), 66 FR 36812 (July 13, 2001).

[10] *See* SR–NASD–2004–025.

issue progressively higher fines for all subsequent minor or technical violations of NASD rules specified in IM–9216 within the next 24-month period or initiate more formal disciplinary proceedings.[11]

NASD proposes to amend the MRVP to include the failure to submit timely amendments to Form U5, as required by Article V, Section 3(a) of the NASD By-Laws. NASD represents that the inclusion of the failure to timely submit amendments to Form U5 would be consistent with the current MRVP, which includes failure to timely submit amendments to Form U4, as required by Article V, Section 2(c) of the NASD By-Laws, and failure to timely submit amendments to Form BD, as required by Article IV, Section 1(c) of the NASD By-Laws. NASD believes that expanding the MRVP to include violations of the failure to timely submit amendments to Form U5 would give NASD's Department of Enforcement the same flexibility to resolve such violations, as violations with respect to the failure to submit timely amendments to the Form U4 and/or Form BD. In addition, NASD believes that the addition of this violation to the MRVP would provide NASD staff with the ability to impose a meaningful sanction for violations that warrant more than a Letter of Caution but do not necessarily rise to a level meriting a full disciplinary proceeding.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Further, NASD believes that the proposed rule change is consistent with section 15A(b)(7) of the Act[13] in that the proposed rule change provides for the appropriate discipline for violation of NASD rules. Also, NASD believes the proposed rule change is consistent with section 15A(b)(8) of the Act[14] in that the proposed rule change provides a fair procedure for the disciplining of NASD members and associated persons.

B. Self-Regulatory Organization's Statement of Burden on Competition

NASD does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

In March 2004, NASD published *Notice to Members 04–23* requesting comment on amending the MRVP to include failure to submit timely amendments to Form U5 and adopting a rule to create an inactive disclosure review registration status. Five of the seven commenters commented on the proposed amendment to the MRVP, and all five commenters supported the proposal.[15] In particular, one commenter suggested that the amount of fines for late Form U5 filings should be based on the percentage of assets under management to encourage compliance. NASD notes that the MRVP is restricted to fines of $2,500 or less. Additionally, NASD notes that, rather than relying on a formula to impose sanctions pursuant to the MRVP, NASD considers the facts and circumstances of each case in determining appropriate sanctions. Moreover, NASD notes that it retains the discretion to bring against a violator full disciplinary action, which may involve higher monetary sanctions, when the facts and circumstances of the violation warrant a formal complaint.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–121 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–121. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–121 and should be submitted on or before September 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–1917 Filed 8–24–04; 8:45 am]

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[11] *See* Notice to Members 04-19 (NASD Releases Minor Rule Violation Plan (MRVP) Guidelines) (March 2004) (providing interested parties with guidance concerning the application of the MRVP to each of the rules under the Plan, as specified in NASD IM–9216 and identifying the factors to be considered in determining whether to dispose of an action under the MRVP and discussing the appropriate levels for fines).

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78o–3(b)(7).

[14] 15 U.S.C. 78o–3(b)(8).

[15] Two commenters addressed the ''inactive disclosure,'' but did not address the MRVP.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50217; File No. SR–NASD–2004–092]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Extension of Short Sale Rule and Continued Suspension of Primary Market Maker Standards Set Forth in Rule 4612

August 18, 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 June 14, 2004, The National Association of Securities Dealers, Inc., through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 21, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was filed by Nasdaq as a non-controversial filing, under Rule 19b–4(f)(6) of the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Nasdaq Stock Market, Inc. (''Nasdaq'') is proposing to extend the pilot effectiveness of Rule 3350 until December 15, 2004. Nasdaq is also seeking to continue the suspension of the effectiveness of the Primary Market Maker (''PMM'') standards currently set forth in Rule 4162 until December 15, 2004. If not extended, these pilot programs would expire on June 15, 2004. In addition, Nasdaq is seeking to extend the pilot effectiveness of the penny ($0.01) legal short sale standard contained in paragraph (b)(2) of Interpretative Material 3350 (''IM–3350'') until December 15, 2004. If not extended, this pilot program would expire on June 30, 2004.

The text of the proposed rule change is as follows. Additions are underlined; deletions are bracketed.[5]

* * * * *

NASD Rule 3350 Short Sale Rule

(a)(1) No Change.

(2) With respect to trades executed on or reported to Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq *Market Center* [National Market Execution System] when the current best (inside) bid is below the preceding best (inside) bid in the security.

(b)–(k) No Change.

(l) This section shall be in effect until [June 15, 2004] *December 15, 2004*.

IM–3350 Short Sale Rule

(a) No Change.

(b)(1) No Change.

(2) With respect to trades executed on or reported to Nasdaq, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq *Market Center* [National Market Execution System] when the current best (inside) bid is below the preceding best (inside) bid in the security. Nasdaq has determined that in order to effect a ''legal'' short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least $0.01 above the current inside bid when the current inside spread is $0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.

(c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A–C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Description of the NASD's Short Sale Rule

Section 10(a) of the Act gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as needed to protect investors. In 1992, Nasdaq, believing that short-sale regulation is important to the orderly operation of securities markets, proposed a short sale rule for trading of its National Market securities that incorporates the protections provided by SEC Rule 10a–1. On June 29, 1994, the SEC approved the NASD's short sale rule (the ''Rule'') applicable to short sales[6] in Nasdaq National Market (''NNM'') securities on an eighteen-month pilot basis through March 5, 1996.[7] The NASD and the Commission have extended Rule 3350 numerous times, most recently, until June 15, 2004.

The Rule employs a ''bid'' test rather than a tick test because Nasdaq trades are not necessarily reported to the tape in chronological order. The Rule prohibits short sales at or below the inside bid when the current inside bid is below the previous inside bid. Nasdaq calculates the inside bid from all market makers in the security and disseminates symbols to denote whether the current inside bid is an ''up-bid'' or a ''down-bid.'' To effect a ''legal'' short sale on a down-bid, the short sale must be executed at a price at least $.01 above the current inside bid. The Rule is in effect from 9:30 a.m. until 4 p.m. each trading day.

In December of 2002, Nasdaq modified the method it uses to calculate the last bid by having it refer to the ''Nasdaq Inside'' which is comprised of quotations from all participants in Nasdaq Market Center execution systems, rather than referring to the National Best Bid and Offer (''NBBO''). Nasdaq currently calculates and applies the Nasdaq-based bid tick indicator to

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated July 21, 2004 (''Amendment No. 1''). Amendment No. 1 notes the name change from ''Nasdaq National Market Execution System'' to ''Nasdaq Market Center.''

[4] 17 CFR 240.19b–4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on July 21, 2004, the date Nasdaq filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[5] The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at *www.nasd.com*.

[6] A short sale is a sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale members must adhere to the definition of a ''short sale'' contained in Rule 200 of Regulation SHO, which is incorporated into Nasdaq's short sale rule by Rule 3350(k)(1).

[7] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 26212 (July 7, 1994) (''Short Sale Rule Approval Order'').

all trades executed by the Nasdaq Market Center. With respect to trades executed outside Nasdaq Market Center execution systems and reported to Nasdaq, Nasdaq participants have been permitted to transition from the NBBO-based bid tick to the Nasdaq-based bid tick, provided that each firm select and apply a single bid tick indicator for all such trades executed by that firm. That transition has not been completed and, as explained below, in light of the Commission's adoption of Regulation SHO, Nasdaq has alerted members that it would not be prudent to transition from the NBBO bid tick to the Nasdaq bid tick at this time.

Background of the Primary Market Maker Standards

To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is invoked, Rule 3350 provides an exemption for ''qualified'' market makers (*i.e.*, market makers that meet the PMM standards). Presently, Rule 4612 provides that a member registered as a market maker pursuant to Rule 4611 may be deemed a PMM if that member meets certain threshold standards. On February 14, 1997, the PMM standards were waived for all NNM securities due to the impact of the SEC's Order Handling Rules and corresponding NASD rule change and system modifications on the operation of the four quantitative standards.[8]

Proposal To Extend the Short Sale Rule and Suspend the PMM Standards

Nasdaq believes that it is in the best interest of investors to extend the short sale regulation pilot program. When the Commission approved the NASD's short sale rule on a pilot basis, it made specific findings that the Rule was consistent with sections 11A, 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Act. Specifically, the Commission stated that, ''recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act.'' [9] In addition, the Commission stated that it ''believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure.'' [10] The benefits that the Commission recognized when it first approved Rule 3350 apply with equal force today.

Similarly, the concerns that caused the Commission to waive the PMM standards in February 1997 continue to exist today. Nasdaq and the Commission agreed to waive the PMM standards for three reasons that were discovered only after the Order Handling Rules were implemented.[11] Through late 1999, Nasdaq represents that it worked diligently to address those concerns to the Commission's satisfaction, including convening a special subcommittee on PMM issues, proposing two different sets of PMM standards, and being continuously available and responsive to Commission staff to discuss this issue. Despite these efforts, the Commission and Nasdaq were unable to establish satisfactory PMM standards. At the request of Commission staff, Nasdaq has begun developing PMM standards suitable to today's rapidly changing marketplace. Reinstating the PMM standards set forth in Rule 4612 would be extremely disruptive to the market and harmful to investors.

Proposal To Extend Penny Short Sale Standard

On March 2, 2001, the Commission approved, on a pilot basis,[12] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. This pilot program has been continuously extended since that date and is currently set to expire on June 30, 2004.[13] Nasdaq now proposes to extend, through December 15, 2004, that pilot program. Extension until December 15, 2004 will allow the Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot. If the instant filing is approved, Nasdaq will continue during the pilot period to require NASD members seeking to effect ''legal'' short sales when the current best (inside) bid displayed by Nasdaq is lower that the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by Rule 3350 and IM–3350 and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also $0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[14] in general and with section 15A(b)(6) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to 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

Nasdaq believes that the proposed rule change will not result in 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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has been filed by Nasdaq pursuant to section 19(b)(3)(A) of the Act [16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17] Nasdaq has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change, as amended,

[8] *See* Securities Exchange Act Release No. 38294 (February 17, 1997), 62 FR 8289 (February 24, 1997).

[9] *See* Short Sale Rule Approval Order, *supra* note 7.

[10] *Id.*

[11] Implementation of the Order Handling Rules created the following three issues: (1) Many market makers voluntarily chose to display customer limit orders in their quotes although the Limit Order Display Rule does not yet require it; (2) SOES decrementation for all Nasdaq stocks significantly affected market makers' ability to meet several of the primary market maker standards; and (3) with the inability to meet the existing criteria for a larger number of securities, a market maker may be prevented from registering as a primary market maker in an initial public offering because it fails to meet the 80% primary market maker test contained in Rule 4612(g)(2)(B). Refer to Rule 11Ac1–4 of the Act for a further reading of the Limit Order Display Rule. 17 CRF 240.11Ac1–4.

[12] *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[13] *See* Securities Exchange Act Release No. 47970 (June 3, 2003), 68 FR 34689 (June 10, 2003).

[14] 15 U.S.C. 78o–3.

[15] 15 U.S.C. 78o–3(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

has become effective pursuant to section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] Nasdaq requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)(iii).[20] Nasdaq believes good cause exists to grant such waivers because of the importance of short sale regulation to the protection of investors and the fact that the pilot programs will each expire if not extended. Nasdaq will implement this rule change immediately.

The Commission believes that waiving the 5-day notice and 30-day pre-operative delay is consistent with the protection of investors and the public interest. The Commission believes that accelerating the operative date does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–092. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASD–2004–092 and should be submitted on or before September 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–1918 Filed 8–24–04; 8:45 am]

BILLING CODE 8010–01–P

[18] *See supra* note 16.

[19] *See supra* note 17.

[20] Under subparagraph (f)(6)(iii) of Rule 19b–4, the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. 17 CFR 240.19b–4(f)(6)(iii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50210; File No. SR–PCX–2004–79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to the Corporate Restructuring and Initial Public Offering of Archipelago Holdings, Inc.

August 18, 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 August 10, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), 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 Exchange. On August 16, 2004, the PCX amended the proposed rule change.[3] The PCX filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which designates the proposed rule change as constituting a ''non-controversial'' rule change and that renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through PCXE, proposes to amend PCXE Rule 14.3 in order to reflect the corporate name change that resulted from the corporate restructuring of Archipelago Holdings, L.L.C. into Archipelago Holdings, Inc. and the subsequent initial public offering of Archipelago Holdings, Inc.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 13, 2004 (''Amendment No. 1''). Amendment No. 1 replaced the original rule filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on August 16, 2004, the date the PCX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rules of PCX Equities, Inc.

Rule 14

* * * * *

Plan of Delegation of Functions by the Pacific Exchange, Inc. to PCX Equities, Inc.

* * * * *

Archipelago Exchange, L.L.C. and Archipelago Holdings, [L.L.C.] *Inc.*

Rule 14.3(a)—No Change.

(b)—Access to and Status of Officers and Directors of Archipelago Holdings, [L.L.C.] *Inc.* All officers and directors of Archipelago Holdings, [L.L.C.] *Inc.*, shall be deemed to be officers and directors of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act.

(c)—No Change.

(d)—Location of Books and Records. Archipelago Exchange, L.L.C., and Archipelago Holdings, [L.L.C.] *Inc.* must maintain all books and records related to the Archipelago Exchange within the United States.

(e)—Confidentiality Requirements. The officers and directors of Archipelago Holdings, [L.L.C.] *Inc.* shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between PCX (including the facilities of PCX Equities) and the functions of WAVE that are not regulated as facilities of PCX Equities. In addition, PCX and PCX Equities shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Archipelago Exchange facility (including the functions of WAVE that are deemed a facility of PCX Equities) and the functions of WAVE as an introducing broker/residual electronic communications network.

(f)—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend PCXE Rule 14.3 to make administrative changes necessary as a result of the corporate restructuring of Archipelago Holdings, L.L.C. into Archipelago Holdings, Inc. and the subsequent initial public offering of Archipelago Holdings, Inc. Archipelago Holdings, Inc. is the entity that will succeed Archipelago Holdings, L.L.C. as the sole parent of the current equities trading facility of PCX and PCXE, the Archipelago Exchange, L.L.C. Thus, the Exchange proposes to amend PCXE Rule 14.3 to replace the term ''Archipelago Holdings, L.L.C.'' with the term ''Archipelago Holdings, Inc.''

2. Statutory Basis

The Exchange believes that this filing is consistent with section 6(b)[7] of the Act, in general, and furthers the objectives of section 6(b)(1),[8] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of the Act) to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of section 6(b)(5),[9] in particular, because the rule is designed to help prevent fraudulent and manipulative acts and practices; to promote just and equitable principals of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and 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.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[14] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days before filing the amended proposal with the Commission.[15] The Exchange has

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] The Commission deems the initial filing of SR–PCX–2004–79 received by the Commission on August 10, 2004 to be the required pre-filing notice

requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that the proposed rule change, as amended, will allow the rules of the Exchange to accurately reflect the fact that Archipelago Holdings, Inc. has succeeded Archipelago Holdings, L.L.C. as the sole parent of the current equities trading facility of PCX and PCXE, the Archipelago Exchange, L.L.C. In addition, the proposed rule change will make no substantive changes to the Exchange's rule. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–79. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–79 and should be submitted on or before September 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–1919 Filed 8–24–04; 8:45 am]

BILLING CODE 8010–01–P

set forth in Rule 19b–4(f)(6)(iii) under the Act, 17 CFR 240.19b–4(f)(6)(iii).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4804]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Aztec Empire''

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, 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 ''The Aztec Empire,'' 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 owner. I also determine that the exhibition or display of the exhibit objects at The Solomon R. Guggenheim Museum, New York, NY from on or about October 14, 2004 to on or about February 13, 2005, 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 Paul Manning, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: (202) 619–5997). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 17, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–19469 Filed 8–24–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 13, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–18873.

Date Filed: August 10, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–ME 0187 dated 9 July 2004. TC2 Europe-Middle East Resolutions r1–r22. *Minutes:* PTC2 EUR–ME 0192 dated 10 August 2004. *Tables:* PTC2 EUR–ME Fares 0093 dated 9 July 2004. *Corrects:* PTC2 EUR–ME Fares 0094 dated 23 July 2004. *Intended effective date:* 1 January 2004.

Docket Number: OST–2004–18901.

Date Filed: August 13, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0298 dated 13 August 2004. TC1 Longhaul (except between USA and Chile, Panama) Expedited Resolution. PTC1 0299 dated 13 August 2004. TC1 Within South America Expedited Resolutions r1–r4. *Intended effective date:* 15 September 2004.

Docket Number: OST–2004–18902.

Date Filed: August 13, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0774 dated 13 August 2004. Mail Vote 402—Resolution 010t—Special Passenger Amending Resolution between Chinese Taipei and Japan r1–

r9. *Intended effective date:* 1 September 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–19453 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Four Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*), the FAA invites public comment on four currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before October 25, 2004.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address, on (202) 267–9895, or by e-mail at: *Judy.Street@faa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information. Comments should evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

1. 2120–0057, Safety Improvements Report Accident Prevention Counselor Activity Reports. The affected public for this collection are pilots, airport operators, and charter and commuter aircraft operators engaging in air transportation. Safety improvement reports are used by airmen to notify the FAA of hazards to flight operations. Accident Prevention Counselor Activity Reports are used by counselors to advise the FAA of Accident Prevention Program accomplishments. The current estimated annual reporting burden is 1,769 hours.

2. 2120–0539, Implementation to the Equal Access to Justice Act. The information is needed to determine an applicant's eligibility for an award of attorney's fees and other expenses under the Equal Access to Justice Act. The current estimated annual reporting burden is 600 hours.

3. 2120–0574, Aviation Safety Counselor of the Year Award. The form is used to nominate private citizens for recognition of their volunteer service to the FAA. The agency will use the information on the form to select nine regional winners and one national winner. The respondents are private citizens involved in aviation. The current estimated annual reporting burden is 180 hours.

4. 2120–0632, Office of Dispute Resolution Procedures for Protests and Contact Disputes, 14 CFR 17. 14 CFR part 17 sets forth procedures for filing solicitation protests and contract claims in the FAA's Office of Dispute Resolution for Acquisition. The regulations seek factual and legal information from protesters or claimants primarily through written submissions. The current estimated annual reporting burden is 820 hours.

Dated: Issued in Washington, DC, on August 19, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 04–19459 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 25, 2004, page 29775.

DATES: Comments must be submitted on or before September 24, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Maintenance, Preventive Maintenance, Rebuilding, and Alteration.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0020.

Form(s): FAA Form 337.

Affected Public: A total of 87,769 certified mechanics, repair stations, and air carriers.

Abstract: FAR part 43 prescribes the rules governing maintenance, rebuilding, and alteration of aircraft and aircraft components, and is necessary to ensure this work is performed by qualified persons, and at proper intervals. This work is done by certified mechanics, repair stations, and air carriers authorized to perform maintenance.

Estimated Annual Burden Hours: An estimated 2,374,434 hours annually.

ADDRESSES: Fax comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, (202) 395–5806, Attention FAA Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; 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 on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 19, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–19460 Filed 8–24–04; 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 Lubbock International Airport, Lubbock, TX

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 Lubbock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 24, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James Loomis, Manager of Lubbock International Airport, at the following address: Director of Aviation, Route 3, Box 389, 5401 N. Martin Luther King Blvd., Lubbock, Texas 79403.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

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 Lubbock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 17, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport 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 December 14, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $2.00.

Proposed charge effective date: February 1, 2005.

Proposed charge expiration date: March 1, 2009.

Total estimated PFC revenue: $4,027,686.

PFC application number: 04–05–C–00–LBB.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

1. PFC Administrative Fees
2. Extend Taxiway L
3. Acquire Airside Equipment
4. Upgrade Perimeter Security Access Control
5. Upgrade Access Control/CCTV
6. Rehabilitate Airside Asphalt Pavement
7. Replace Airfield Pavement Surface Condition Sensor System
8. Replace Airfield Guidance Signage Panels

Proposed class or classes of air carriers to be exempted from collecting PFC's:

1. FAR Part 135 non-scheduled Air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.
2. Commuters and Small Air Carriers with unscheduled enplanements filing DOT Form 298C.
3. Large Certificate Route Air Carriers with unscheduled enplanement, filing RSPA form T–100.

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 office located at:Federal Aviation Administration,Southwest Region, Airports Division,Planning and Programming Branch, ASW–610,2601 Meacham Blvd.,Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lubbock International Airport.

Issued in Fort Worth, Texas on August 17, 2004.

Naomi L. Saunders,

Manager, Airports Division,

[FR Doc. 04–19458 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2004, there were four applications approved. This notice also includes information on one application, approved in April 2004, inadvertently left off the April 2004 notice. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of 158.29.

PFC Applications Approved

Public Agency: South Jersey Transportation Authority, Egg Harbor Township, New Jersey.

Application Number: 04–03–C–00–ACY.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $750,000.

Earliest Charge Effective Date: June 1, 2006.

Estimated Charge Expiration Date: November 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/On demand air carriers (with less than 1,200 annual enplaned passengers) filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Atlantic City International Airport.

Brief Description of Project Approved for Collection and Use: Category I instrument landing system on runway 31.

Brief Description of Project Approved for Use: Taxiway H relocation.

Decision Date: April 27, 2004.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, New York Airports District Office, (516) 227–3812.

Public Agency: Spokane Airport Board, Spokane, Washington.

Application Number: 04–04–C–00–GEG.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $4,461,711.

Earliest Charge Effective Date: May 1, 2005.

Estimated Charge Expiration Date: May 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment.

Taxiway F construction.

Security improvements.

Terminal modifications for security improvements.

Safety equipment.

Taxiway G construction.

Terminal capacity improvements.

Brief Description of Project Partially Approved for Collection and Use: Planning studies (master plan).

Determination: The public agency did not provide adequate justification for the runway 3 extension environmental assessment portion of this project. Therefore, that component was not approved.

Brief Description of Disapproved Project: Runway 3/21 extension.

Determination: The public agency did not provide adequate justification for this project.

Brief Description of Withdrawn Project: Land acquisition.

Determination: The public agency withdrew this project by letter dated April 22, 2004.

Decision Date: July 9, 2004.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: City of Atlanta, Georgia.

Application Number: 04–06–C–00–ATL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $18,462,000.

Earliest Charge Effective Date: June 1, 2018.

Estimated Charge Expiration Date: August 1, 2018.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Hartsfield Jackson International Airport.

Brief Description of Project Approved for Collection and Use:

Security screening checkpoint reconfiguration and expansion.

Security access control system.

Decision Date: July 13, 2004.

FOR FURTHER INFORMATION CONTACT: Terry R. Washington, Atlanta Airports District Office, (404) 305–7143.

Public Agency: Northwestern Regional Airport Commission, Traverse City, Michigan.

Application Number: 04–03–C–00–TVC.

Application type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,190,785.

Earliest Charge Effective Date: January 1, 2018.

Estimated Charge Expiration Date: April 1, 2019.

Class of Air Carriers Not Required To Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Cherry Capital Airport.

Brief Description of Projects Approved for Collection and Use: New terminal building and associated projects (environmental).

New south terminal complex (predesign).

Aircraft rescue and firefighting vehicle.

Security fencing, south building area.

New airline terminal complex clearing and grubbing.

PFC preparation costs.

Audit charges.

Water main and sanitary sewer.

Natural gas utility to new terminal and proposed aircraft rescue and firefighting and snow removal buildings.

Multi-user flight information display system.

Service road and utilities.

Taxiway G, perimeter road, and airport layout plan update.

Terminal baggage and passenger screening.

South terminal landscape and irrigation.

Perimeter road.

Airport entrance drive.

Passenger loading bridges.

Terminal building (utilities)—part B.

Computer controlled access system.

New terminal furniture.

Boundary survey and exhibit A property map.

Parallel taxiway G.

Decision Date: July 13, 2004.

FOR FURTHER INFORMATION CONTACT: Jason Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: City of McAllen, Texas.

Application Number: 04–03–C–00–MFE.

Application type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $2,075,050.

Earliest Charge Effective Date: October 1, 2004.

Estimated Charge Expiration Date: January 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: On demand Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at McAllen Miller International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Improve south perimeter road and fencing.

Conduct environmental assessment and benefit cost analysis for runway 13/31 extension.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Air carrier ramp joint reseal and spall repair.

Overlay taxiway C.

Rehabilitate taxiway A, general aviation, air traffic control tower, and customs aprons.

Brief Description of Withdrawn Project: Acquire land for runway 13/31 extension.

Determination: The public agency withdrew this project by letter dated July 6, 2004.

Decision Date: July 22, 2004.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
96–02–C–04–JAX, Jacksonville, FL	06/16/04	$19,042,209	$20,213,839	06/01/99	08/01/99
97–03–U–02–JAX, Jacksonville, FL	06/16/04	NA	NA	06/01/99	08/01/99
02–02–C–01–AVL, Asheville, NC	07/12/04	$4,977,794	$4,936,653	11/01/06	11/01/06
01–05–C–01–VLD, Valdosta, GA	07/14/04	$315,826	$260,826	11/01/03	11/01/03
01–12–C–06–ORD, Chicago, IL	07/16/04	$1,449,012,097	$1,082,312,097	08/01/16	06/01/13
03–01–C–01–RDU, Raleigh-Durham, NC	07/21/04	$69,903,473	$9,778,473	09/01/08	10/01/04
02–04–C–01–TOL, Toledo, OH	07/23/04	$3,921,997	$3,921,997	11/01/06	11/01/06

Issued in Washington, DC, on August 18, 2004.

JoAnn Horne,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 04–19461 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Parts Manufacturer Approval Procedures Revision

AGENCY: Federal Aviation Administration DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests public comments on the proposed revision of Federal Aviation Administration (FAA) Order 8110.42, Parts Manufacturer Approval Procedures. This document establishes procedures for the evaluation and approval of replacement and modification parts for use on type-certificated products. The proposed revision retains the airworthiness standards in Title 14 of the Code of Federal Regulations (14 CFR) part 21 21.303.

DATES: Comments must be received on or before September 24, 2004.

ADDRESSES: Send all comments on the proposed revision to FAA Order 8110.42 to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: John Milewski, AIR–110. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC, 20591, or electronically submit comments to the following Internet address: *9-AWA-AVR-AIR-PMA-Comments@faa.gov.* Include in the subject line of your message the title of the document, Comments ''FAA Order 8110.42, Parts Manufacturer Approval Procedures.''

FOR FURTHER INFORMATION CONTACT: John Milewski, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Certification Procedures Branch, AIR–110, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267–3411, FAX (202) 267–5340, or e-mail at: *john.milewski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the draft order listed in this notice by sending such written data, views, or arguments to the above listed address. Please identify ''Parts Manufacturer Approval Procedures'' as the subject of your comments. You may also examine comments received on the proposals before and after the comment closing date at the FAA Headquarters Building, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before implementing the revision.

Background

The draft order clarifies policy, language and simplifies format. Also the draft order adds examples, expands on the test and computation method and provides more guidance on reverse engineering. New appendices and text reemphasize the roles of Designated Engineering Representatives in the design approval process beyond findings of identicality. Other new appendices list the varied uses of ''critical'' in the context of aircraft parts, as well as, provide guidance on statistical sampling in a quality system. The proposed draft does not change existing policies. The FAA developed this draft based on industry proposals to engender a consistent approval process for aircraft parts.

How To Obtain Copies

You can get an electronic copy via the Internet at *http://www.faa.gov/certification/aircraft/DraftDoc/Comments.htm* or by contacting the person named in the paragraph **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on August 18, 2004.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–19457 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revision to FAA Order 8110.4C, Type Certification

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests public comments on the proposed revision ''C'' of the Federal Aviation Administration Order 8110.4. This proposed revision prescribes the procedures for evaluating and approving aircraft type design data and changes to previously approved type design data. In it, we prescribe the responsibilities and procedures we must follow to certify civil aircraft, aircraft engines, and propellers, as required by specific parts of Title 14 of the Code of Federal Regulations (14 CFR).

DATES: Comments must be received on or before September 20, 2004.

ADDRESSES: Send all comments on the proposed revised Order to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Madeleine Miguel, AIR–110. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC, 20591, or electronically submit comments to the following Internet address: *9-AWA-81104-Comments@faa.gov.* Include in

the subject line of your message the title of the document, ''Draft Order 8110.4C, Type Certification.''

FOR FURTHER INFORMATION CONTACT: Madeleine Miguell, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Certification Procedures Branch, AIR–110, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267–3777, Fax (202) 267–5340, or e-mail at: *maddie.miguel@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the draft order listed in this notice by sending such written data, views, or arguments to the above listed address. Please identify ''Draft Order 8110.4C, Type Certification'' as the subject of your comments. You may also examine comments received on the draft order before and after the comment closing date at the FAA Headquarters Building, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director of the Aircraft Certification Service before issuing the final revised Order.

Background

This revised draft order redefines the responsibilities and procedures for Federal Aviation Administration (FAA) aircraft certification personnel responsible for the certification process required by Title 14 of the Code of Federal Regulations for civil aircraft, aircraft engines, and propellers. In redefining those responsibilities and procedures, the FAA provides updated guidance to their personnel and industry on policy and procedures for the type certification of aircraft products. The order has been revised extensively to incorporate information from FAA Order 8110.44, Conformity Inspection Notification Process; FAA Order 8100.5, Aircraft Certification Directorate Procedures; FAA Order 8110.48, How to Establish the Certification Basis for Changed Aeronautical Products; among other directives. This proposed revision also incorporates a revised type certification process model that more accurately depicts the complexities of the process.

How To Obtain Copies

You can get an electronic copy via the Internet at *http:www.faa.gov/certification/aircraft/DraftDoc/Comments.htm* or by contacting the person named in the paragraph **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on August 19, 2004.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–19456 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2004–18781]

Agency Information Collection Activities; Request for Comments; Emergency Clearance of a New Information Collection; NHI Web Portal

AGENCY: National Highway Institute, Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 24, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2004–18781 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time, or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nancy Stout, (703) 235–1260, National Highway Institute, Federal Highway Administration, Department of Transportation, 4600 N. Fairfax Drive, Suite 800, Arlington, VA 22203. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Highway Institute Web Portal.

Background: The National Highway Institute (NHI) is required by Congress to provide surface transportation training to the State Departments of Transportation, Metropolitan Planning Organizations, the private sector, and universities. Further, the E-Gov initiative requires the NHI to use technology to more efficiently serve our customers who work and live throughout the United States.

NHI's customers are composed of several different groups with varied needs. In an effort to better serve each group's needs, the NHI Web Portal will provide the following capabilities for its users:

- Register for courses
- Pay for courses and course materials
- Request to host an NHI course
- View training history
- Register for a web conference
- Schedule a web conference

In order to provide the above capabilities to our users, some personal information will be necessary for the NHI Web Portal. Common information that will be collected includes name (first and last), telephone number, and e-mail address, to be used for identification and correspondence purposes. In addition, the mailing address will be used to ship course materials to students and/or hosts (those hosting an NHI training course). Billing information will be collected to allow customers to easily pay for their courses and course materials. Billing information shall not be stored within the NHI Web Portal, and will only be used to verify payment information.

As required by the International Association for Continuing Education and Training, students must be able to obtain their training history. To make this possible, a student must be uniquely identified, which requires the collection of personal information including name and the last four digits of their social security number. This information will be used to identify the specific training participant and to generate accurate training history in the form of a transcript. The transcript is accepted by professional associations and State Licensure Boards as proof that the individual has completed training and received professional development hours or continuing education units required, all or in part, to meet criteria

for continued licensure or certification. NHI is a source of that professional education.

In summary, the purpose of the new information collection is to improve the quality of NHI's customer service. Allowing customers to enter personal information provides them with an increasingly automated service that leads to more timely information.

Respondents: NHI training customers throughout the U.S. NHI trains approximately 13,000 students per year in more than 500 training sessions and provides training products and/or services to another 1,000 (approximate) customers. These products include training materials distributed to university faculty and programs, private sector providers and hosts, and participants.

Frequency: Persons requesting training or materials will submit their requests as needed. Our experience indicates that only one request per individual per year will be received.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden Hours: We anticipate approximately, 14,000 users × 5 minutes per request = 1,167 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: August 19, 2004.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04–19454 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Notice of Public Meeting and Workshop—Tuesday, September 21, 2004

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting and workshop.

SUMMARY: The National Highway Traffic Safety Administration will conduct a public meeting and workshop to present a new vehicle safety initiative being planned by the U.S. Department of Transportation (U.S. DOT). Meeting attendees will be given an opportunity to participate in a workshop in order to ask questions and provide comments on the scope, content, and approach of the proposed program.

DATE AND TIME: The public meeting and workshop will be held on Tuesday, September 21, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: The public meeting and workshop will be held at the Doubletree Hotel Novi, 27000 Sheraton Drive, Novi, Michigan 48377.

FOR FURTHER INFORMATION CONTACT: For questions and further information please contact: Raymond Resendes, Federal Highway Administration (FHWA), (202) 366–2182, *Raymond.Resendes@fhwa.dot.gov* or Jack Ference, NHTSA, (202) 366–0168, *Jack.Ference@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: The U.S. DOT has initiated a new safety research program entitled: ''Integrated Vehicle Based Safety Systems'' (IVBSS). One of the goals of this program is to work cooperatively with industry to accelerate the introduction and commercialization of effective integrated safety systems for light vehicles, commercial vehicles, and transit buses. These systems will assist drivers in avoiding crashes and will reduce the number and severity of injuries resulting from rear-end, run-off-road, and lane change crashes.

Based on 2003 crash statistics, there were approximately 3.8 million police-reported rear-end, run-off-road, and lane change crashes on U.S. roadways (about 60 percent of all crashes). These crashes accounted for 54 percent of the people injured in all motor vehicle crashes and about 52 percent of all related fatalities. Preliminary analyses have shown that individual rear-end, run-off-road, and lane change crash countermeasure systems could collectively prevent about 17 percent of all motor vehicle crashes. Integration of these individual systems is expected to increase the safety benefits, improve overall system performance, and reduce system cost.

This initiative will build upon prior U.S. DOT-sponsored crash avoidance research to develop and test integrated systems for passenger, commercial, and transit vehicles. It will conduct the research and field operational testing necessary to determine the safety benefits, driver acceptance, and effectiveness of integrated safety systems.

There is an extensive body of knowledge on countermeasures addressing each of these three types of crashes individually but little on their integration. In this program, performance specifications and objective tests for integrated crash warning systems addressing rear-end, run-off-road, and lane change crashes will be developed.

This meeting is open to the public. It is being held to introduce the program and obtain feedback from all interested parties, including light vehicle, heavy truck, and transit bus original equipment manufacturers, first-tier suppliers, and fleet operators.

The meeting will begin with a program overview by U.S. DOT staff. Following the program overview, meeting attendees will be given the opportunity to provide comments, ask questions and participate in a workshop to discuss the scope, content, approach, and overall program plan for the IVBSS initiative.

Pre-registration for this meeting is mandatory. Also, please note that attendance will be limited to the first 100 registrants due to space limitations of the meeting room.

Information needed by workshop participants, including the IVBSS Program Plan and a list of questions to be discussed in the workshop will be posted on the U.S. DOT's and the Intelligent Transportation Society of America's Web site at: *http://www.its.dot.gov and http://www.itsa.org.*

This information will be available on these Web sites after August 27, 2004.

Issued on: August 19, 2004.

Joseph N. Kanianthra,

Associate Administrator for Vehicle Safety Research, National Highway Traffic Safety Administration.

[FR Doc. 04–19455 Filed 8–24–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') called for the submission of Large Position Reports by those entities whose reportable positions in the 4% Treasury Notes of June 2009 equaled or exceeded $2 billion as of close of business August 18, 2004.

DATES: Large Position Reports must be received before noon Eastern Time on August 27, 2004.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Government Securities Dealer Statistics Unit, 4th Floor, 33 Liberty Street, New York, New York 10045; or faxed to (212) 720–5030.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Executive Director; Lee Grandy, Associate Director; or Kevin Hawkins, Government Securities Specialist; Bureau of the Public Debt, Department of the Treasury, at (202) 504–3632.

SUPPLEMENTARY INFORMATION: In a press release issued on August 23, 2004, and in this **Federal Register** notice, the Treasury called for Large Position Reports from entities whose reportable positions in the 4% Treasury Notes of June 2009, Series J–2009, equaled or exceeded $2 billion as of the close of business Wednesday, August 18, 2004. This call for Large Position Reports is a test pursuant to the Department's large position reporting rules under the Government Securities Act regulations (17 CFR part 420). Entities whose reportable positions in this note equaled or exceeded the $2 billion threshold must report these positions to the Federal Reserve Bank of New York. Entities with positions in this note below $2 billion are not required to file reports. Large Position Reports must be received by the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York before noon Eastern Time on Friday, August 27, 2004, and must include the required position and administrative information. The Reports may be faxed to (212) 720–5030 or delivered to the Bank at 33 Liberty Street, 4th floor.

The 4% Treasury Notes of June 2009 have a CUSIP number of 912828 CL 2, a STRIPS principal component CUSIP number of 912820 KH 9, and a maturity date of June 15, 2009.

The press release and a copy of a sample Large Position Report, which appears in Appendix B of the rules at 17 CFR part 420, are available at the Bureau of the Public Debt's Internet site at *www.publicdebt.treas.gov.*

Questions about Treasury's large position reporting rules should be directed to Treasury's Government Securities Regulations Staff at Public Debt on (202) 504–3632. Questions regarding the method of submission of Large Position Reports should be directed to the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York at (212) 720–7993.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1535–0089.

Dated: August 19, 2004.

Brian C. Roseboro,

Under Secretary, Domestic Finance.

[FR Doc. 04–19515 Filed 8–23–04; 11:06 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Depositor's Application To Withdraw Postal Savings (POD–315)

AGENCY: Financial Management Service, Fiscal service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the ''Depositor's Application to Withdraw Postal Savings (POD–315).''

DATES: Written comments should be received on or before October 25, 2004.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Rose Brewer, Judgment Fund Branch, 3700 East West Highway, Room 630F, Hyattsville, Maryland 20782, (202) 874–6664.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Depositor's application to Withdraw Postal Savings.

OMB Number: 1510–0034.

Form Number: POD–315.

Abstract: This form is prepared by the applicant for payment of a Postal Savings Account. This form is used to identify the depositor and ensure that payment is made to the proper person. POD form was formerly used by the Post Office Department for processing payments when payments of accounts were their responsibility.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 700.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 350.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Wanda Rogers,

Assistant Commission, Financial Operations.

[FR Doc. 04–19431 Filed 8–24–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–102–88]

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, PS–102–88 (TD 8612), Income, Gift and Estate Tax (20.2056A–3, 20.2056A–4, and 20.2056A–10).

DATES: Written comments should be received on or before October 25, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul H. Finger, 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 Larnice Mack at Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Income, Gift and Estate Tax.

OMB Number: 1545–1360.

Regulation Project Number: PS–102–88.

Abstract: This regulation concerns the availability of the gift and estate tax marital deduction when the donee spouse or the surviving spouse is not a United States citizen. The regulation provides guidance to individuals or fiduciaries: (1) For making a qualified domestic trust election on the estate tax return of a decedent whose surviving spouse is not a United States citizen in order that the estate may obtain the marital deduction, and (2) for filing the annual returns that such an election may require.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,300.

Estimated Time Per Respondent: 2 hours, 40 minutes.

Estimated Total Annual Burden Hours: 6,150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 18, 2004.

Paul H. Finger,

IRS Reports Clearance Officer.

[FR Doc. 04–19481 Filed 8–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–399–88]

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, INTL–399–88 (TD 8434), Treatment of Dual Consolidated Losses (1.1503–2).

DATES: Written comments should be received on or before October 25, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul H. Finger, 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 Larnice Mack at Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Treatment of Dual Consolidated Losses.

OMB Number: 1545–1083.

Regulation Project Number: INTL–399–88.

Abstract: Internal Revenue Code section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. This regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign country and if an agreement is attached to the income tax return of the dual resident corporation or group, to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 3 hrs., 14 minutes.

Estimated Total Annual Burden Hours: 1,620 minutes.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 18, 2004.

Paul H. Finger,

IRS Reports Clearance Officer.

[FR Doc. 04–19482 Filed 8–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–4–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–4–89 (TD 8580), Disposition of an Interest in a Nuclear Power Plant (§ 1.468A–3).

DATES: Written comments should be received on or before October 25, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Dispostion of an Interest in a Nuclear Power Plant.

OMB Number: 1545–1378.

Regulation Project Number: PS–4–89.

Abstract: This regulation relates to certain Federal income tax consequences of a dispostion of an interest in a nuclear power plant by a taxpayer that has maintained a nuclear decommissioning fund with respect to that plant. The regulation affects taxpayers that transfer or acquire interests in nuclear power plants by providing guidance on the tax consequences of these transfers. In addiiton, the regulation extends the benefits of Internal Revenue Code section 468A to electing taxpayers with an interest in a nuclear power plant under the jurisdiction of the Rural Electrication Administration.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 70.

Estimated Time Per Respondent: 8 hrs., 13 minutes.

Estimated Total Annual Burden Hours: 575 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 12, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–19483 Filed 8–24–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
August 25, 2004

Part II

Department of Veterans Affairs

38 CFR Parts 41 and 49
Audits of States, Local Governments, and Non-Profit Organizations; Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 41 and 49

RIN 2900–AJ62

Audits of States, Local Governments, and Non-Profit Organizations; Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend VA's regulations to codify the provisions of revised OMB Circular A–133. That circular provides standards for consistency and uniformity among Federal agencies for the audits of States, local governments, and non-profit organizations expending Federal awards. Further, this document proposes to codify the provisions of former OMB Circular A–110. That rule provides for uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations. Codification of these provisions allows VA to execute these standards and requirements through the establishment of binding rules.

DATES: *Comment date:* Comments must be received on or before October 25, 2004.

ADDRESSES: Written comments may be submitted by: Mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VAregulations@mail.va.gov;* or, through *www.Regulations.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AJ62.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: John Corso, Management Systems Improvement Service, (008B3), Office of Policy, Planning, and Preparedness, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–5053. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document proposes to revise Part 41 of VA's regulations to codify the provisions of revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' That circular provides standards for consistency and uniformity among Federal agencies for the audits of States, local governments, and non-profit organizations expending Federal awards. The revised OMB Circular A–133 was published at 68 FR 38401 (June 23, 2003). OMB Circular A–133 implements the Single Audit Act Amendments of 1996, which were signed into law on July 5, 1996 (Public Law 104–156).

Further, this document proposes to add a new Part 49 to Chapter 1 of VA's regulations to codify the provisions of 2 CFR Part 215 (formerly OMB Circular A–110), ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations.'' That rule provides for uniform administrative requirements for Federal agencies with grants and agreements with institutions of higher education, hospitals, and other non-profit organizations. Codification of these provisions allows VA to execute these standards and requirements through the establishment of binding rules.

Paperwork Reduction Act

OMB approved the information collection associated with OMB Circular A–133 (§§ 41.235, 41.320, and 41.505 of this proposed rule) under control number 0348–0057. OMB approved the information collection associated with 2 CFR Part 215 (formerly OMB Circular A–110) and contained in SF–269, SF–269A, SF–270, SF–272, and SF–272A (§ 49.52 of this proposed rule) under control numbers 0348–0004, 0348–0003, 0348–0038, 0348–0039. Discussion of the information collection request was published in the **Federal Register** both as a first notice for public notice and comment on November 5, 1996 (61 FR 57232) and as a second notice advising of submission to OMB for approval on June 30, 1997 (62 FR 35302).

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed amendment would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The actions and costs imposed on entities by the adoption of the proposed rule would be only a small portion of the actions and costs of such entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Number

The Catalog of Federal Domestic Assistance program numbers for this document are 64.005, 64.024, 64.203.

List of Subjects in 38 CFR Parts 41 and 49

Accounting, Grant programs, Indians, Intergovernmental relations, Loan programs.

Approved: April 14, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

Editorial Note: This document was received in the Office of the Federal Register on August 12, 2004.

For the reasons set forth above, 38 CFR Chapter 1 is proposed to be amended as follows:

1. Part 41 is revised to read as follows:

PART 41—Audits of States, Local Governments, and Non-Profit Organizations

Subpart A—General

Sec.

41.100 Purpose.
41.105 Definitions.

Subpart B—Audits

41.200 Audit requirements.
41.205 Basis for determining Federal awards expended.
41.210 Subrecipient and vendor determinations.
41.215 Relation to other audit requirements.
41.220 Frequency of audits.
41.225 Sanctions.
41.230 Audit costs.
41.235 Program-specific audits.

Subpart C—Auditees

41.300 Auditee responsibilities.
41.305 Auditor selection.
41.310 Financial statements.
41.315 Audit findings follow-up.
41.320 Report submission.

Subpart D—Federal Agencies and Pass-Through Entities

41.400 Responsibilities

41.405 Management decision.

Subpart E—Auditors

41.500 Scope of audit.
41.505 Audit reporting.
41.510 Audit findings.
41.515 Audit working papers.
41.520 Major program determination.
41.525 Criteria for Federal program risk.
41.530 Criteria for a low-risk auditee.

Appendix A To Part 41—Data Collection Form (Form SF–SAC)
Appendix B To Part 41—OMB Circular A–133 Compliance Supplement

Authority: 31 U.S.C. ch. 75; 38 U.S.C. 501; Pub. L. 98–502; 98 Stat. 2327; Pub. L. 104–156; 110 Stat.1396 unless otherwise noted.

Subpart A—General

§ 41.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

(Authority: Pub. L. 104–156; 110 Stat.1396)

§ 41.105 Definitions.

Audit finding means deficiencies which the auditor is required by § 41.510(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under this part.

Auditor means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

CFDA number means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. ''Other clusters'' are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an ''other cluster,'' a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 41.400(d)(1) and § 41.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § 41.520, and, with the exception of R&D as described in § 41.200(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 41.400(a).

Compliance supplement refers to the Circular A–133 Compliance Supplement, included as Appendix B to Circular A–133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Federal agency has the same meaning as the term agency in section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § 41.205(h) and § 41.205(i).

Federal program means:

(1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) ''Other clusters,'' as described in the definition of cluster of programs in this section.

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of financial reporting; and

(3) Compliance with applicable laws and regulations.

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process—effected by an entity's management and other personnel—designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

(1) Transactions are properly recorded and accounted for to:

(i) Permit the preparation of reliable financial statements and Federal reports;

(ii) Maintain accountability over assets; and

(iii) Demonstrate compliance with laws, regulations, and other compliance requirements;

(2) Transactions are executed in compliance with:

(i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and

(ii) Any other laws and regulations that are identified in the compliance supplement; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 41.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § 41.215(c).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

(1) Any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

OMB means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § 41.400(b). A Federal agency with oversight for an auditee may reassign oversight to another Federal agency which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment.

Pass-through entity means a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

Program-specific audit means an audit of one Federal program as provided for in § 41.200(c) and § 41.235.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. *Development* is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Single audit means an audit which includes both the entity's financial statements and the Federal awards as described in § 41.500.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 et seq.) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § 41.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: Activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § 41.210.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart B—Audits

§ 41.200 Audit requirements.

(a) *Audit required.* Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § 41.205.

(b) *Single audit.* Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with § 41.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-

specific audit conducted in accordance with § 41.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than $500,000.* Non-Federal entities that expend less than $500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § 41.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.205 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at institutions of higher education.* When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds which are federally restricted are considered awards expended in each year in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.210 Subrecipient and vendor determinations.

(a) *General.* An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) *Federal award.* Characteristics indicative of a Federal award received by a subrecipient are when the organization:

(1) Determines who is eligible to receive what Federal financial assistance;

(2) Has its performance measured against whether the objectives of the Federal program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable Federal program compliance requirements; and

(5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) *Payment for goods and services.* Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program.

(d) *Use of judgment in making determination.* There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure

compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) *Compliance responsibility for vendors.* In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.215 Relation to other audit requirements.

(a) *Audit under this part in lieu of other audits.* An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (*e.g.*, financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) *Federal agency to pay for additional audits.* A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) *Request for a program to be audited as a major program.* A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 41.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

(a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs;

(c) Suspending Federal awards until the audit is conducted; or

(d) Terminating the Federal award.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.230 Audit costs.

(a) *Allowable costs.* Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) *Unallowable costs.* A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 *et seq.*) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity which has Federal awards expended of less than $500,000 per year and is thereby exempted under § 50.200(d) of this chapter from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with § 41.400(d)(3), provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: Activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.235 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a program-specific audit guide is not available, the auditee

and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 41.315(b), and a corrective action plan consistent with the requirements of § 41.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements § 41.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § 41.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § 41.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 41.505(d)(1) and findings and questioned costs consistent with the requirements of § 41.505(d)(3).

(c) *Report submission for program-specific audits.* (1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § 41.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 41.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § 41.320(e)(2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) Other sections of this part may apply. Program-specific audits are subject to § 41.100 through § 41.215(b), § 41.220 through § 41.230, § 41.300 through § 41.305, § 41.315, § 41.320(f) through § 41.320(j), § 41.400 through § 41.405, § 41.510 through § 41.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart C—Auditees

§ 41.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 41.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § 41.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 41.315(b) and § 41.315(c), respectively.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.305 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, auditees shall follow the procurement standards prescribed by part 43 of this chapter, 2 CFR Part 215 (formerly Circular A–110), ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,'' or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in part 43 of this chapter, 2 CFR Part 215 (formerly OMB Circular A–110), or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.310 Financial statements.

(a) *Financial statements.* The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 41.500(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.315 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under § 41.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) Corrective action plan. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an explanation and specific reasons.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.320 Report submission.

(a) *General.* The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) *Data Collection.* (1) The auditee shall submit a data collection form which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (*e.g.,* State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

(i) The type of report the auditor issued on the financial statements of the auditee (*i.e.,* unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.

(v) The type of report the auditor issued on compliance for major programs (*i.e.*, unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to section 41.320(d)(2) of OMB Circular A–133.

(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under section 41.530 of OMB Circular A–133.

(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in section 41.520(b) of OMB Circular A–133.

(ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.

(x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:

(A) Activities allowed or unallowed.

(B) Allowable costs/cost principles.

(C) Cash management.

(D) Davis-Bacon Act.

(E) Eligibility.

(F) Equipment and real property management.

(G) Matching, level of effort, earmarking.

(H) Period of availability of Federal funds.

(I) Procurement and suspension and debarment.

(J) Program income.

(K) Real property acquisition and relocation assistance.

(L) Reporting.

(M) Subrecipient monitoring.

(N) Special tests and provisions.

(xiii) Auditee name, employer identification number(s), name and title of certifying official, telephone number, signature, and date.

(xiv) Auditor name, name and title of contact person, auditor address, auditor telephone number, signature, and date.

(xv) Whether the auditee has either a cognizant or oversight agency for audit.

(xvi) The name of the cognizant or oversight agency for audit determined in accordance with § 41.400(a) and § 41.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the data elements prescribed by OMB.

(c) *Reporting package.* The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 41.310(a) and § 41.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in § 41.315(b);

(3) Auditor's report(s) discussed in § 41.505; and

(4) Corrective action plan discussed in § 41.315(c).

(d) *Submission to clearinghouse.* All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) *Additional submission by subrecipients.* (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also

subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) *Requests for report copies.* In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) *Report retention requirements.* Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) *Clearinghouse responsibilities.* The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and § 41.235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) *Clearinghouse address.* The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) *Electronic filing.* Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart D—Federal Agencies and Pass-Through Entities

§ 41.400 Responsibilities.

(a) *Cognizant agency for audit responsibilities.* Recipients expending more than $50 million a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment. The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000). Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the report submission due date required by § 41.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § 41.220, consider auditee requests to qualify as a low-risk auditee under § 41.530(a).

(b) Oversight agency for audit responsibilities. An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 41.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) *Federal awarding agency responsibilities.* The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) *Pass-through entity responsibilities.* A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending $500,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.405 Management decision.

(a) *General.* The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) *Federal agency.* As provided in § 41.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 41.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) *Pass-through entity.* As provided in § 41.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) *Time requirements.* The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) *Reference numbers.* Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § 41.510(c).

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart E—Auditors

§ 41.500 Scope of audit.

(a) *General.* The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) *Financial statements.* The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) *Internal control.* (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with § 41.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in

the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 41.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data Collection Form.* As required in § 41.320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (*i.e.,* unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (*i.e.,* unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under § 41.510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 41.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 41.530.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in § 41.510(a).

(i) Audit findings (*e.g.,* internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.510 Audit findings.

(a) *Audit findings reported.* The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than $10,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor

shall also report known questioned costs when likely questioned costs are greater than $10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than $10,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (*e.g.,* as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 41.315(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail.* Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.515 Audit working papers.

(a) *Retention of working papers.* The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) *Access to working papers.* Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.520 Major program determination.

(a) *General.* The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) *Step 1.* (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) $300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed $300,000 but are less than or equal to $100 million.

(ii) $3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $100 million but are less than or equal to $10 billion.

(iii) $30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § 41.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) *Step 2.* (1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least

one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § 41.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § 41.510(a)(3) and § 41.510(a)(4), fraud under § 41.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § 41.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: The criteria in § 41.525(c), § 41.525(d)(1), § 41.525(d)(2), and § 41.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the end of the fiscal year to be audited of OMB's approval.

(d) *Step 3.* (1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § 41.525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § 41.525(b)(1), § 41.525(b)(2), and § 41.525(c)(1), a single criteria in § 41.525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) $100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to $100 million in total Federal awards expended.

(ii) $300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than $100 million in total Federal awards expended.

(e) *Step 4.* At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) *Option 1.* At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) *Option 2.* One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B) of this section, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) *Percentage of coverage rule.* The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § 41.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) *Documentation of risk.* The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) *Deviation from use of risk criteria.* For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.525 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (*e.g.*, one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 41.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 41.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Appendix A to Part 41—Data Collection Form (Form SF–SAC)

Note: Data Collection Form SF–SAC and instructions for its completion may be obtained from the following Web page: *http://harvester.census.gov/fac/collect/sfsac_01.pdf*. It is also available from the address provided in § 41.320(i).

Appendix B to Part 41—OMB Circular A–133 Compliance Supplement

Note: OMB Circular A–133 Compliance Supplement is available from the OMB Office of Administration, Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503.

2. Part 49 is added to read as follows:

PART 49—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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Appendix A to Part 49—Contract Provisions

Authority: 31 U.S.C. ch. 75; 38 U.S.C. 501; Pub. L. 98–502; 98 Stat. 2327; Pub. L. 104–156; 110 Stat. 1396, unless otherwise noted.

Subpart A—General

§ 49.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in §§ 49.4, and 49.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share of real property, equipment, or supplies* means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on

an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 49.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in paragraph (e) of this section.

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR 401.2(d).

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, ''Debarment and Suspension.''

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations, for financial reports prepared on a cash basis,* means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 49.4.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations in part 43 of this chapter.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart B—Pre-Award Requirements

§ 49.10 Purpose.

Sections 49.11 through 49.17 prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Federal awarding agency shall decide on the appropriate award instrument (*i.e.*, grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with part 44 of this chapter, which restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.14 Special award conditions.

If an applicant or recipient has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, ''Metric Usage in Federal Government Programs.''

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.16 Resource Conservation and Recovery Act (RCRA).

Under the RCRA (Public Law 94–580, 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions

of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.17 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart C—Post-Award Requirements

Financial and Program Management

§ 49.20 Purpose of financial and program management.

Sections 49.21 through 49.28 prescribe standards for financial management systems, methods for making payments and rules for: Satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.21 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 49.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described in paragraphs (a) through (d) of this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 49.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. Federal awarding agencies may also use this method on any

construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless either of the following conditions apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless any of the following conditions apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs.''

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of the following.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding

agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if either of the following conditions apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (*e.g.*, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 49.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 49.30 through 49.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals

from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Educational Institutions,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (*i.e.,* the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (*i.e.,* recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever any of the following conditions apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 49.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) For-profit hospitals not covered by the audit provisions of revised OMB

Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.29 Conditional exemptions.

(a) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(b) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A–87 (Attachment A, subsection C.3), ''Cost Principles for State, Local, and Indian Tribal Governments,'' A–21 (Section C, subpart 4), ''Cost Principles for Educational Institutions,'' and A–122 (Attachment A, subsection A.4), ''Cost Principles for Non-Profit Organizations,'' and from all of the administrative requirements provisions of OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' and part 43 of this chapter.

(c) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A–87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Property Standards

§ 49.30 Purpose of property standards.

Sections 49.31 through 49.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 49.31 through 49.37.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.32 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (*i.e.,* awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines

provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (*e.g.*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals.'') Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) *Exempt property.* When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is ''exempt property.'' Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or

more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 49.34(g).

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Procurement Standards

§ 49.40 Purpose of procurement standards.

Sections 49.41 through 49.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.41 Recipient responsibilities.

The standards contained in §§ 49.41 through 49.48 do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that all of the following conditions apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (*e.g.,* fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Reports and Records

§ 49.50 Purpose of reports and records.

Sections 49.51 through 49.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 49.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in 49.51(f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each

award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year. Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 49.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be

retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 49.53(g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Termination and Enforcement

§ 49.60 Purpose of termination and enforcement.

Sections 49.61 and 49.62 set forth uniform suspension, termination and enforcement procedures.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.61 Termination.

(a) Awards may be terminated in whole or in part only if all of the following conditions apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 49.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 49.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the following conditions apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not

preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see § 49.13).

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Subpart D—After-the-Award Requirements

§ 49.70 Purpose.

Sections 49.71 through 49.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 49.31 through 49.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(Authority: Pub. L. 104–156, OMB Circular A–110)

§ 49.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 49.26.

(4) Property management requirements in §§ 49.31 through 49.37.

(5) Records retention as required in § 49.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 49.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

(Authority: Pub. L. 104–156; 110 Stat. 1396)

§ 49.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by any of the following methods.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

(Authority: Pub. L. 104–156; 110 Stat. 1396)

Appendix A To Part 59—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or

dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act* (42 U.S.C. 7401 *et seq.*) *and the Federal Water Pollution Control Act* (33 U.S.C. 1251 *et seq.*), as amended—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

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Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Process for Exempting Critical Uses From the Phaseout of Methyl Bromide; Request for Information on Existing and Available Stocks of Methyl Bromide; Proposed Rule and Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7802–3]

RIN 2040–0170

Protection of Stratospheric Ozone: Process for Exempting Critical Uses From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to amend the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Subchapter VI of the Clean Air Act (CAA), as amended. Today's proposed amendments provide the framework for an exemption permitted under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and Subchapter VI of the CAA and specify the amount of methyl bromide that may be supplied in 2005 from available stocks and new production and consumption to meet proposed critical uses. Specifically, EPA is proposing requirements to govern the ''critical use'' exemption from the production and consumption (defined as production plus imports minus exports) phaseout for quantities of class I, Group VI controlled substances (methyl bromide) that are produced or imported for critical uses. EPA is also proposing the list of uses that qualify for the critical use exemption in 2005, the amount of additional methyl bromide that may be produced or imported for those uses in 2005, and limitations on the sale of existing inventories for use in critical use categories that are a necessary condition applicable to those who are granted the privilege in 2005 of obtaining a dedicated supply of methyl bromide from new production and imports for critical uses after the scheduled phaseout date.

DATES: Written comments on the proposed rule must be received on or before October 12, 2004. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. eastern standard time on September 7, 2004. If a hearing is requested it will be held September 10, 2004. If a hearing is held, commenters will have 30 days to submit follow up comments before the close of the comment period. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0230, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: finman.hodayah@epa.gov.*
- *Fax:* 202–343–2337 attn: Hodayah Finman.
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Air Docket, EPA West 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No.OAR–2003–0230. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Hodayah Finman by telephone at (202) 343–9246, or by e-mail at *finman.hodayah@epa.gov*, or by mail at Hodayah Finman, U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the Ozone Depletion Web site of EPA's Global Programs Division at *http://www.epa.gov/ozone* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION: This proposed rule concerns Clean Air Act restrictions on the consumption, production and on the use of methyl bromide (class I, Group VI controlled substance) for critical uses after the phaseout date of January 1, 2005. Under the Clean Air Act, methyl bromide consumption and production will be phased out on January 1, 2005, apart from allowable exemptions, namely the proposed critical use exemption and the existing quarantine and pre-shipment exemption. With today's action, EPA is

proposing a framework for how the critical use exemption will operate as well as specific amounts of methyl bromide to be made available for proposed critical uses.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this proposed action are those associated with the production, import, export, sale, application and use of methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers, Importers and Exporters of methyl bromide; Applicators, Distributors of methyl bromide; Users of methyl bromide, *e.g.* farmers of vegetable crops, fruits and seedlings; and owners of stored food commodities and structures such as grain mills and processors, Government and non-government researchers.

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is aware could potentially be regulated by this proposed action. To determine whether your facility, company, business, or organization is regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Docket.* EPA has established an official public docket for this action under the Office of Air and Radiation Docket & Information Center, Electronic Air Docket ID No. OAR–2003–0230. 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 EPA West, 1301 Constitution Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, phone: (202) 566–1742, fax: (202) 566–1741. The materials may be inspected from 8:30 a.m. until 4:30 p.m. Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials.

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. EPA prefers that you use the electronic EPA Dockets at *http://*

www.epa.gov/edocket/ to submit or view public comments and access the index listing of the contents of the official public docket. To locate the docket on EPA's docket Web site, select ''search,'' then key in the appropriate docket identification number, in this case OAR–2003–0230. Additional supporting documents related to this proposed action may be found in EPA's electronic docket system, docket numbers OAR–2002–0018 and OAR–2003–0017 and in EPA's paper docket, Air Docket ID No. A–2000–24.

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, will not be included in the official public docket and will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit B.

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.

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?

EPA is seeking comments on options that are proposed, as well as all other options and methods that are discussed. You may submit comments electronically, by mail or through hand delivery/courier. The preferred method for submitting comments on this proposed rulemaking is to submit comments to the electronic docket OAR–2003–0230. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment, in this instance OAR–2003–0230. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of comment period will be marked late. EPA is not required to consider late comments. If you plan to submit comments, please notify Hodayah Finman, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 343–9246.

Information designated as Confidential Business Information (CBI) under 40 CFR part 2, subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

To submit an electronic comment as described below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments is the preferred method for submitting comments. Go directly to EPA dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments to docket OAR–2003–0230.

ii. *By Mail.* Send one copy of your comments to each of the following two offices: U.S. Environmental Protection Agency, Air and Radiation Docket (6102), Electronic Air Docket ID No. OAR–2003–0230 Washington, DC 20460 and to U.S. Environmental Protection Agency, (6205J) 1200 Pennsylvania Ave., NW., Washington, DC 20460, attn: Hodayah Finman docket no. OAR–2003–0230.

iii. *By Hand Delivery or Courier.* Deliver your comments to: Hodayah Finman 1310 L Street, NW., Washington, DC 20005, Attention Electronic Air Docket ID No. OAR–2003–0230. Such deliveries are only accepted during the normal hours of operation 9 a.m to 5 p.m.

iv. *By Facsimile.* Fax your comments to both: (202) 566–1741, Attention Electronic Air Docket ID No. OAR–2003–0230 and to (202) 343–2337, Attention Hodayah Finman, Electronic Air Docket No. OAR–2003–0230.

D. How Should I Submit Confidential Business Information (CBI) to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the mail or courier addresses listed in the **FOR FURTHER INFORMATION CONTACT** section, Electronic Air Docket ID No. OAR–2003–0230. 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 should 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.

II. What Is the Background to the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection

Program that limit production and consumption of ozone depleting substances can be found at 40 CFR part 82 subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA) that included Title VI on Stratospheric Ozone Protection to ensure that the United States could satisfy its obligations under the Protocol. EPA has made several amendments to the regulations since that time.

III. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas, which is used as a broad-spectrum pesticide and is controlled under the CAAA as a Class I ozone depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a wide variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule on the phaseout schedule for methyl bromide published in the **Federal Register** on March 18, 1993 (58 FR 15014), and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). The phaseout schedule for methyl bromide was revised in a concurrent proposal and direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption and extended the phaseout to 2005. The revised phaseout schedule was again amended to allow for an exemption for quarantine and preshipment purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule (68 FR 238) on January 2, 2003. Information on methyl bromide can be found at the following sites of the World Wide Web: *http://www.epa.gov/ozone/mbr* and *http://teap.org* or by contacting the Stratospheric Ozone Hotline at 1–800–296–1996.

Because it is a pesticide, methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority and by states under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Because of this status, a restricted use pesticide is subject to certain federal and state requirements governing its sale, distribution, and use. Nothing in this proposed rule implementing the Clear Air Act is intended to derogate from provisions in any other federal, state, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that would be affected by the proposed provisions must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The proposed regulations in today's rulemaking are intended only to implement Clean Air Act restrictions on the production, consumption and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

IV. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?

Methyl bromide was added to the Protocol as an ozone depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Protocol established a freeze in the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting in Copenhagen. The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing the freeze. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 69235), listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in section 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001 (58 FR 65018). This phaseout date was consistent with requirements under section 602(d) of the CAA for newly listed class I ozone-depleting substances that ''no extension under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.'' Therefore, the 1993 regulation established a United States phaseout for methyl bromide in 2001.

At their 1995 meeting, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At this time, the U.S. continued to have a 2001 phaseout date in accordance with the Clean Air Act language. At their 1997 meeting, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout for industrialized countries. In October 1998, the U.S. Congress amended Subchapter VI of the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to bring the U.S. phaseout of methyl bromide in line with the global requirements specified under the Protocol and to provide for the exemptions under the Protocol. These amendments were contained in section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA. On November 28, 2000, EPA issued regulations to amend the phaseout schedule for methyl bromide and extend the complete phaseout of production and consumption to 2005 (65 FR 70795).

Today, in accordance with the 1998 amendments to the CAA, EPA is proposing to further amend 40 CFR part 82 to implement an exemption to the 2005 phaseout of methyl bromide that allows continued production and consumption of methyl bromide for critical uses. Section 604(d)(6) of the Clean Air Act provides that ''[t]o the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or instrumentalities of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses.'' 42 U.S.C. 7671c(d)(6). Article 2H (5) of the Montreal Protocol provides that the 2005 methyl bromide phaseout shall not apply ''to the extent the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.''

Both section 604(d)(6) and section 614(b) of the CAA address the relationship between the Montreal

Protocol and actions taken under Subchapter VI of CAA. Section 604(d)(6) addresses critical uses specifically, while section 614(b) is more general in scope. Section 604(d)(6) states that ''to the extent consistent with the Montreal Protocol,'' the Administrator may exempt methyl bromide for critical uses. Section 614(b) states that Subchapter VI ''shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In case of a conflict between any provision of this subchapter and any provision of the Montreal Protocol, the more stringent provision shall govern.''

EPA must take into account not only the text of Article 2H but also the related Decisions of the Protocol Parties that interpret that text. Under customary international law, as codified in the 1969 Vienna Convention on the Law of Treaties (8 International Legal Materials 679 (1969)) both the treaty text and the practice of the parties in interpreting that text form the basis for its interpretation. Although the United States is not a party to the 1969 Convention, the United States has regarded it since 1971 as ''the authoritative guide to current treaty law and practice.'' See Secretary of State William D. Rodgers to President Richard Nixon, October 18, 1971, 92d Cong., 1st Sess., Exec. L (November 22, 1971). Specifically, Article 31(1) of the Vienna Convention provides that ''[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.'' Article 31(3) goes on to provide that ''[t]here shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.'' In the current circumstances Decisions of the Parties can be construed as subsequent consensus agreements among the Parties to the Montreal Protocol, including the United States, regarding the interpretation and application of the Protocol.

In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. At their Ninth Meeting in 1997, the Parties issued Decision IX/6 which established criteria applicable to the critical use exemption. In paragraph 1 of Decision IX/6, the Parties agreed as follows:

(a) That a use of methyl bromide should qualify as ''critical'' only if the nominating Party determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination;

(b) That production and consumption, if any, of methyl bromide for critical uses should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into account the circumstances of the nomination * * * Non-Article V [Developed country] parties must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes* * *

The Parties also agreed in Decision IX/6 that the technical panel (discussed below) that reviews nominations and makes recommendations to the Parties regarding approval of critical use exemptions, would base its review and recommendations on the criteria in paragraphs (a)(ii) and (b). The criterion in paragraph (a)(i) was not subject to review by this technical panel.

At the First Extraordinary Meeting of the Parties in March of 2004, the Parties issued several decisions that address the agreed critical uses, the allowable levels of new production and consumption for critical uses, the conditions for granting critical use exemptions, and reporting obligations. Decision Ex. I/3 covers the agreed critical uses and allowable levels of new production and consumption for the year 2005. This Decision includes the following terms:

1. For the agreed critical uses set forth in annex II A to the report of the First Extraordinary Meeting of the Parties to the Montreal Protocol for each Party, to permit, subject to the conditions set forth in decision Ex. I/4, the levels of production and consumption set forth in annex II B to the present report which are necessary to satisfy critical uses, with the understanding that additional levels and categories of uses may be approved by the Sixteenth Meeting of the Parties in accordance with decision IX/6;

2. That a Party with a critical-use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such difference between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available;

3. That a Party using stocks under paragraph 2 above shall prohibit the use of stocks in the categories set forth in annex II A to the report of the First Extraordinary Meeting of the Parties to the Montreal Protocol when amounts from stocks combined with allowable production and consumption for critical uses exceed the total level for that Party set forth in annex II A to the present report;

4. That Parties should endeavor to allocate the quantities of methyl bromide recommended by the Technology and Economic Assessment Panel as listed in annex II A to the report of the First Extraordinary Meeting of the Parties;

5. That each Party which has an agreed critical use should ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing the use of methyl bromide and that such procedures take into account available stocks. Each Party is requested to report on the implementation of the present paragraph to the Ozone Secretariat;

The agreed critical uses and allowable levels of production and consumption are set forth in annexes to the Parties' report. Decision Ex I/4 addresses the conditions for granting and reporting critical-use exemption for methyl bromide.

Decisions IX/6, Ex. I/3, and Ex. I/4 are subsequent consensus agreements of the Parties that address the interpretation and application of the critical use provision in Article 2H(5) of the Protocol. For example, Decision Ex. I/3 reflects a decision called for by the text of Article 2H(5) where the parties are directed to ''decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.'' EPA intends to follow the terms of Decisions IX/6, Ex. I/3, and Ex. I/4. This would ensure consistency with the Montreal Protocol and satisfy the requirements of Section 604(d) (6) and Section 614(b) of the CAA.

Decision Ex. I/3 recognizes that article 2H(5) of the Protocol contemplates that the Parties will make two separate determinations when establishing the critical use exemption. First, the Parties agree on the total amount and categories

of uses that are deemed critical under the criteria established in Decision IX/6. Second, the Parties determine the maximum level of new production and consumption that should be permitted because it is necessary to satisfy those critical uses. Under paragraph 1 of Decision Ex. I/3, the first of these determinations (the ''agreed critical uses'') is reflected in annex II A to the report of the First Extraordinary Meeting of the Parties. For the United States, the Parties agreed to 16 critical uses for methyl bromide and authorized use of 8,942 metric tons of methyl bromide for these critical uses. The second of these determinations is set forth in annex II B which allows the United States 7,659 metric tons of production and consumption of methyl bromide to satisfy critical uses. Where the level of agreed critical uses exceeds the level of new production and consumption determined by the Parties to be necessary to satisfy those uses, a Party is to utilize available stocks of methyl bromide to fill the gap. Decision Ex. I/3, para. 2. Parties are to ensure that the total use of methyl bromide material supplied from existing stocks and new production and consumption does not exceed the overall level of use agreed to be critical. Decisions Ex. I/3, para. 3. Thus, Decision Ex. I/3 establishes two caps with respect to methyl bromide for 2005—one on the level of new production and consumption for critical uses and one on the total usage of methyl bromide in the agreed critical use categories.

Under Decision Ex I/3, the United States is allowed to use a total of 8,942 metric tons of methyl bromide in 2005 to satisfy critical uses. In accordance with Decision Ex I/3, the quantity of new production and consumption in combination with the amount of stocks determined to be available for the specified critical uses cannot exceed for 2005 the amount of 8,942 metric tons. Because of the cap on the amount of methyl bromide available for the specified critical uses, EPA will not authorize new production and consumption that, when combined with use of available stocks, would exceed the agreed critical use level of 8,942 metric tons. The methyl bromide to satisfy those uses may be derived from available stocks of material or new production and consumption. The upper limit on the amount of new production and consumption for the specified critical uses is 7,659 metric tons. However, this level of new production and consumption was authorized by the Parties subject to compliance with the conditions set forth in Decisions Ex. I/3 and Ex. I/4. One of these conditions, in paragraph 5 of Decision Ex. I/3, provides that ''each Party which has an agreed critical use should ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing the use of methyl bromide and that such procedures take into account available stocks.'' Thus, in deciding the level of new production and consumption allowed in the United States, EPA is proposing to consider the amount of methyl bromide from stocks recognized by EPA to be ''available'' for critical uses.

In addition, to prevent the total use levels of methyl bromide from exceeding the critical use cap, Paragraph 3 of Decision Ex I/3 requires that Parties prohibit the use of stocks of methyl bromide under certain circumstances. This provision states ''that a Party using stocks under paragraph 2 above shall prohibit the use of stocks in the categories set forth in annex II A to the report of the First Extraordinary Meeting of the Parties to the Montreal Protocol when amounts from stocks combined with allowable production and consumption exceed the total level for that Party set forth in annex II A to the present report.'' This restriction applies in countries where methyl bromide material necessary to meet the agreed critical uses is derived from a combination of available stocks and new production or imports. In this situation, a Party may not allow the total amount of material supplied from stocks and new production and consumption to exceed the level of use for categories determined by the Parties to be critical. This restriction is necessary to ensure that a Party's total level of use in critical use categories does not exceed the level which formed the basis for the Parties' decision to authorize new production and consumption at particular levels. This limitation was deemed to be a necessary condition applicable to Parties authorized under the critical use exemption to produce or import a dedicated supply of methyl bromide to meet critical needs after the 2005 phaseout of methyl bromide.

Thus, in accordance with Decision Ex. I/3, if EPA authorizes new production and consumption to supplement available stocks, EPA will restrict the use of existing stocks of methyl bromide in cases where use of stocks combined with the authorized level of new production and consumption could exceed the critical use cap. In light of the Parties' agreement in Decision Ex. I/3 that such a restriction is needed to implement Article 2H(5) of the Protocol, EPA is authorized under sections 604(b)(6) and 614(b) of the Clean Air Act to regulate the use of existing stocks of methyl bromide. EPA's power under section 604(b)(6) to exempt new production, importation, and consumption of methyl bromide for critical uses exists ''to the extent consistent with the Montreal Protocol.'' 42 U.S.C. 7671c(b)(6). Because the Parties have interpreted the Protocol to impose such a use restriction as a condition for the authorization of new production and consumption for critical uses, EPA will adhere to the same restriction in its domestic implementation of the critical use exemption. This adherence is consistent with section 614(b) of the Clean Air Act. 42 U.S.C. 7671m(b).

Although many parts of the Montreal Protocol and Subchapter VI of the Clean Air Act focus on controlling the production and consumption of ozone depleting substances, select provisions also require restrictions on the use of such substances. For example, section 605 of the Clean Air Act restricts the use of class II substances (hydrochlorofluorocarbon) to a limited number of applications starting in 2015. 42 U.S.C. 7671d(a). Section 608 of the CAA requires the Administrator to promulgate regulations to reduce the use and emission of class I substances during the service, repair, and disposal of appliances and refrigeration equipment. 42 U.S.C. 7671g. The essential use exemption in sections 604(d)(1)-(3) authorizes limited production of controlled substances subject to the limitation that such substances may only be used in specific applications. 42 U.S.C. 7671c(d). Likewise, the critical use exemption under section 604(d)(6) permits exempted production, importation, and consumption but only ''for critical uses.'' 42 U.S.C. 7671c(d)(6). Thus, under the essential use and critical use exemptions, new production and consumption is necessarily restricted to particular use categories.

In the case of the critical use exemption for methyl bromide, the Parties recognized in Decision Ex. I/3 that the use restrictions on newly produced material must also extend to the use of existing stocks of such material in those use categories for which new production and consumption has been permitted by the Parties under the exemption. As noted above, such a restriction is necessary to ensure that Parties abide by the critical use representations underlying the authorization of new production and consumption. Where new production and consumption is authorized because sufficient material is not available from

existing stocks, then the predicate for this decision would be undermined if Article 2H(5) of the Protocol was interpreted to permit unrestricted use of existing stocks in the categories of use that may utilize newly produced or imported material. Furthermore, placing such a limitation on the use of existing stocks encourages the entities in possession of the methyl bromide material to make it available for critical uses. This limitation reduces the incentive for entities to withhold methyl bromide material from the market in order to induce EPA to authorize more new production.

This kind of a restriction on the use of existing stocks is also authorized under the essential use exemption for production or import of CFCs and other class I controlled ozone-depleting substances as a condition for allowing new production and consumption. However, for practical reasons the Parties and EPA have never needed to expressly impose such restrictions under the essential use exemption. The limited quantities of CFCs and methyl chloroform produced and consumed in the United States under the essential use exemption have historically been held by the users of such substances. In addition, the number of essential uses and size of the user community is very small. Essential uses have been limited to use of CFCs as propellants in asthma inhalers by not more than 10 companies and the servicing of space vehicles by the National Aeronauticsal and Space Administration. Thus, it has been much easier under the essential use exemption for the Parties and EPA to determine how much existing material is available to the essential users and to ensure that the exempted production and consumption in a given year was not grossly exceeding the level of essential need. In the case of the essential use exemption, the Parties never agreed to a Decision that limited the amount of material available from stocks for uses deemed essential. However, the Parties track the stocks of these essential use materials to ensure the exempted production and consumption does not result in a growing stockpile.

In contrast, in the case of methyl bromide, the majority of existing stocks of methyl bromide are not owned and controlled by users but by producers, distributors, and importers of such material. There are also hundreds of potential users and many uses for methyl bromide. In addition, the Parties have authorized a greater number of critical uses for methyl bromide (16 categories in the U.S. for 2005), and these uses were identified based on specific limiting conditions under which methyl bromide use in those categories becomes critical. In this situation, there is more risk that the use level in critical use categories could exceed the level of agreed critical use without express regulation. In the case of essential use allowances, there was no need for an express restriction on use of existing stocks because the marketplace and the user community self-regulated. However, in a situation such as methyl bromide where the distribution patterns of the material are different and the user group and critical use profile is much larger, the EPA can no longer rely solely on self-regulation to ensure the appropriate use level.

Thus, in accordance with these authorities, EPA is proposing a limit on the sale of stocks of methyl bromide to the approved users permitted to obtain new production and consumption for their critical uses. We propose that holders of stocks will only be authorized to sell methyl bromide for critical uses by expending critical stock allowances (CSAs) allocated by EPA through this rulemaking action. The proposed limitation on the sale of stocks is narrowly defined and applicable only to the categories of critical uses for which new production and consumption has been authorized because of a demonstrated critical need for methyl bromide in that category under certain limiting conditions. Consistent with Decision Ex. I/3, those critical users who benefit from the greater assurance of obtaining a dedicated supply of methyl bromide for critical uses in 2005 from new production or imports, as a condition of obtaining this benefit, have limited access to existing stocks of methyl bromide to avoid exceeding the overall critical use cap established in Decision Ex. I/3.

EPA is proposing a limitation on the amount of stocks that may be sold to the end-users, defined as ''approved critical users'' (*see* description below in Section VI.I.), who may obtain a dedicated supply of methyl bromide from new production or imports under the critical use exemption. In addition, EPA is proposing that end-users in these same categories listed in Decision Ex. I/3, who applied for an exemption but were determined in the preparation of the U.S. government nomination to have technically and economically feasible alternatives to methyl bromide available for their circumstances of use (thus lacking the critical need for methyl bromide) would not have access to methyl bromide from stockpiles. Thus, EPA is proposing that holders of pre-phaseout stocks would not be permitted to sell these stocks in 2005 to end-users in nominated sectors who do not have the ''limiting critical conditions'' (*see* Section VI.K below) that make methyl bromide use critical for the categories listed in Decision Ex I/3. In reviewing applications and developing the U.S. nomination for 2005 critical use exemptions, the U.S. government determined and submitted documentation that in particular circumstances there is a critical need for methyl bromide, and that for the other circumstances in that sector there are technically and economically available alternatives to methyl bromide (*e.g.*, curcurbit production in Michigan with less than moderate fungal pathogen infestation). EPA is proposing that end-users in sectors nominated by the U.S. that do not have the specified ''limiting critical conditions'' would not have access to stocks of methyl bromide because, without the limiting critical conditions, they can use the technically and economically feasible alternatives. EPA seeks comment on these proposed limitations.

The Agency recognizes there may be other options for controlling access to methyl bromide inventories after the phaseout if necessary to maintain use below the cap set forth in Decision Ex. I/3. Other groups of users who might be subject to controls on use of stocks could include: (1) Those users who did not apply for a critical use exemption, (2) those users who did apply but whose category of use did not, under any limiting condition, meet the conditions necessary to be included in the U.S. government nomination for critical use exemptions, or (3) those users who applied and were nominated by the U.S. government but whose use was not included among the agreed critical uses for 2005 set forth in the Parties' Decision Ex I/3. Thus, we request comment on whether these groups of users should also be subject to a limitation on the use of stocks of methyl bromide produced or imported prior to the phaseout and whether we may establish such a limitation under applicable legal authority.

V. What Is the Critical Use Exemption Process?

The procedural requirements for the critical use exemption are delineated in Decision IX/6 of the Parties to the Protocol. As applied in the United States, users of methyl bromide who believe they may meet the criteria to qualify for a critical use exemption may make an application to EPA for inclusion in the U.S. nomination of critical uses. Starting in 2002, EPA began notifying applicants as to the availability of the application, and the

deadline to apply, with a notice in the **Federal Register** (68 FR 24737) and an announcement on the methyl bromide Web site at *http:/www.epa/.gov/ozone/mbr.* Applicants for the critical use exemption must provide information demonstrating to the U.S. government that the specific use of methyl bromide is critical because (1) the lack of availability of methyl bromide for that use would result in significant market disruption, and (2) the applicants have no technically and economically feasible alternatives or substitutes to methyl bromide available to them that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of use. Applicants for the exemption must also submit information on their use of methyl bromide, on research into the use of alternatives to methyl bromide, on efforts to minimize use of methyl bromide and to reduce emissions and on the specific technical and economic results of testing alternatives to methyl bromide. Applicants may apply as individuals or as part of a group of users (a ''consortium'') who face the same limiting critical conditions (*i.e.* specific conditions which establish a critical need for methyl bromide).

The U.S. government reviews applications and creates a package for submission to the Ozone Secretariat of the Protocol for uses nominated as having a critical need for methyl bromide beyond the phaseout. Each Party must justify such a request by determining that (1) the specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (2) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

The critical use nominations (CUNs) of various countries are then reviewed by a technical committee that advises the countries that have ratified the Protocol (the ''Parties'' to the Protocol). This technical committee is known as the Methyl Bromide Technical Options Committee (''MBTOC'') of the Technical and Economic Assessment Panel (''TEAP''). The TEAP is an advisory body to the Parties to the Protocol and is directed by the Parties to provide assessments and reviews for consideration by the Parties at their annual meetings. The TEAP has subgroups called Technical Option Committees that are organized to focus on specific topic areas of interest to the Parties. Based on the recommendations of MBTOC and TEAP and their own review of the Critical Use Nominations (CUNs) submitted by various countries seeking a critical use exemption, the Parties, at their annual meetings, take decisions to authorize critical use exemptions which ''permit the level of production or consumption [of methyl bromide] that is necessary to satisfy uses agreed to them to be critical uses'' (Article 2H, paragraph 5).

After decisions by the Parties, for each control period, EPA will provide an opportunity such as this for comment on the amounts of methyl bromide that may be supplied under the critical use exemption and the end uses eligible to use critical use methyl bromide.

EPA recognizes that users of methyl bromide who qualify for a critical use exemption and producers and importers of methyl bromide, need to have certainty regarding the amounts of methyl bromide that will be available under this proposed exemption and the additional regulatory procedures that govern the production and use of critical use methyl bromide before the phaseout date of January 1, 2005. Therefore, EPA is considering all available regulatory procedures that will allow affected entities to have operational certainty about an exemption in advance of the phaseout date.

VI. What Are the Details of Today's Proposed Action To Implement the Critical Use Exemption for Methyl Bromide?

In today's proposed action, the Agency is proposing both (1) the regulatory framework for how the critical use exemption will operate; (2) and the allocation of allowances established under this framework to methyl bromide producers, importers and suppliers for the 2005 control period.

A. What Is the Total Amount of Methyl Bromide That May Be Supplied for U.S. Critical Uses?

EPA is proposing a determination that the United States has a critical use level for methyl bromide of 8,942,214 kilograms for 2005 (including amounts from available stocks and new production or imports). This is the amount that the U.S. government included in the U.S. Critical Use Nomination as adjusted by the Parties in Decision Ex I/3. This amount is adjusted from the 9,777,288 kilograms originally nominated by the U.S. government. The difference between the two amounts is accounted for by the following adjustments as determined by MBTOC, TEAP and the Parties to the Montreal Protocol: (a) The removal of methyl bromide for tobacco seedling float trays, totaling 1,323 kilograms, a use category that the Parties agreed did not meet the conditions for a critical use exemption, (b) a reduction of 53,328 kilograms to account for the market uptake of sulfuryl fluoride, a newly registered alternative for the fumigation of stored food items, (c) a reduction of 635,027 kilograms from strawberry field uses of methyl bromide due to further adoption of alternatives, in particular emulsified 1,3 dichloropropene formulations, (d) a reduction of 145,367 kilograms for turfgrass production to reflect lower application rates using mixtures with lower concentrations of methyl bromide, and (e) a small number of kilograms based on rounding adjustments. EPA seeks comment on the amount of methyl bromide the Agency has determined to be necessary to satisfy the critical uses authorized by the Parties for 2005. EPA refers commenters to the E-Docket where the U.S. nominations and additional responses to MBTOC are available. These are the technical documents which are the basis for the Parties and EPA's determination. At this time, EPA does not have additional information to indicate that it should adjust the amounts authorized by the Parties, but seeks comments on whether additional research and data is available with respect to the deployment of alternatives, the adoption of emission reduction technologies, and the other criteria listed in Decision IX/6.

Based on the review of the nominations discussed above, the Parties to the Montreal Protocol allowed the United States to permit up to 7,659 metric tons of newly produced and imported quantities of methyl bromide for the agreed critical uses set forth in Annex II.a of Decision Ex I/3 if this amount is determined by EPA to be necessary to satisfy the agreed critical uses. Supplies of methyl bromide for critical uses may be obtained by end users from available stocks of methyl bromide, or, new production or imports.

EPA is proposing to consider adjusting the authorized level of new production and consumption for critical uses by the amount of ''available'' stocks (consumption is defined as production plus imports minus exports). As recognized by the Parties, the level of existing stocks may differ from the level of available stocks. Under this approach, EPA will assess how much methyl bromide is available from existing inventories and then determine how much is available to meet market demand for critical uses. The Decisions by the Parties recognize that assessment

of existing inventory should account for inventory intended to meet the needs of developing countries. Decision Ex I/3 (2) further states, ''That a Party with a critical-use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such difference between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, Decision IX/6 and Decision Ex I/3 recognize that not all existing stocks may be available to meet critical uses. The EPA has the authority to make this determination, and has developed an analysis for developing an estimate of available stocks which it believes is consistent with the Clean Air Act and with Decision Ex I/3.

EPA has solicited information on existing and available stocks from approved critical users and from producers, importers, and major distributors of methyl bromide in the United States through a combination of the critical use exemption applications and information request letters sent to entities pursuant to Section 114 of the Clean Air Act. In developing today's action for the 2005 compliance period, EPA believes it has sufficient information to make a preliminary assessment about the level of existing and available stocks. However, to update this information about existing and available stocks, EPA is publishing in today's **Federal Register** a Section 114 Information Request asking any person who has stocks of methyl bromide they hold for sale or transfer to another entity as of August 25, 2004, that are unrestricted (not for quarantine and preshipment and produced solely for export to Article 5 countries) and not under contract for delivery to a specific end-user to submit information to EPA by September 23, 2004. For years beyond 2005, EPA describes later in this proposed rulemaking annual reporting requirements that will provide the Agency with sufficient information to assess the level of existing and available stocks.

EPA proposes to use the following approach, based on reasoning described below in this section, to assess how much of the existing stocks are available for critical uses. EPA seeks comment on the proposed method and reasoning described in the following paragraphs. EPA proposes to use a top-down methodology which involves deducting the amounts of stocks that are unavailable (not available for critical uses) from the existing stocks. This methodology can be represented as follows: $AS = (ES + B) - E1 - E2 - C - N - D$, where AS = available stocks; ES = existing stocks or unrestricted total stocks held in the United States by producers, importers, distributors, and applicants in 2004; B = banked stocks of methyl bromide that were produced or imported with expended critical use allowances in a given year that were unused during that year; E1 = stocks not produced with Article 5 allowances held for export to developing countries; E2 = amounts held for export to developed countries in 2004; C = amounts held in catastrophic reserve; N = amounts held for transition management in non-critical use categories in 2005, and; D = the estimated drawdown of stocks by U.S. and international consumers in 2004. In this methodology, existing stocks (ES) do not include restricted stocks of methyl bromide that were produced under the exemptions for quarantine and preshipment and with expended Article 5 allowances to meet the basic domestic needs of Article 5 countries. The information, judgments, and assumptions we used to quantify each of the factors in the methodology described above are further elaborated below and also in a Technical Support Document that can be obtained following the specific instructions below.

Although the discussion of the methodology and factors above and below are specific to the proposed determination of available stocks for 2005, EPA is proposing this methodology as part of the regulatory framework that EPA will use in each control period after 2005 for the U.S. determinations of available stocks.

Export is an important global consideration in determining the level of available stocks for domestic critical uses. The U.S. faces different circumstances from many other Parties because it is a methyl bromide producer country as well as a user country. Unlike the majority of the Parties that have authorized critical uses for 2005, the U.S. has stocks of methyl bromide to meet global demands in 2004 for methyl bromide not just for developing countries but for developed countries as well. Therefore, particularly in the case of the U.S., stocks held by U.S. companies are not necessarily available for U.S. users. This is a different case from Parties that satisfy their demand for methyl bromide strictly through imports. Any stocks available in the distribution chain of an importing country are presumably imported for the express purpose of meeting the demands of domestic end users. EPA believes that an accurate accounting of available stocks must take into account the global demand for the product in both developed (E2) and developing (E1) countries as authorized under the Protocol.

Furthermore, the U.S. is the world's largest supplier of methyl bromide. In the event of an unforeseen catastrophe such as the destruction of a production plant, EPA believes that a strategic buffer should be held in reserve in order to meet real time global demand for methyl bromide. Since U.S. companies supply a significant portion of the world, a catastrophe in the U.S. would not only affect U.S. users but would affect those users who have authorized critical uses in developed countries as well as the users in developing countries who have not yet phased out methyl bromide. EPA estimates that a catastrophic plant incident that resulted in unforeseen shutdown could result in a three month supply disruption and that a catastrophic buffer (C) equal to the amount of methyl bromide produced for both domestic and overseas markets for transformation, quarantine and preshipment, and critical uses for that period of time is necessary to prevent a significant impact on many industrial sectors using methyl bromide as a feedstock, on global trade that relies on methyl bromide to protect the introduction of invasive species, and on agricultural sectors globally that have recognized critical needs to fumigate with methyl bromide.

In addition, some entities in the U.S. did not apply for a critical use exemption because they intend to meet their small, limited needs through existing U.S. inventories of methyl bromide. EPA therefore would set aside an amount (N) from the existing stockpile to meet the needs of end users who did not apply for an exemption but who are still using methyl bromide during their transition to alternatives.

Finally, stocks in the United States will continue to be sold and used by domestic and international consumers throughout the 2004 calendar year, in advance of the January 1, 2005 phaseout date. This drawdown (D) should be considered in determining the amount of stocks available for critical uses in 2005.

EPA is proposing to use the methodology described above to develop an estimate of the portion of existing stocks available for critical uses. In Decision Ex. I/3, the Parties agreed that for 2005 the United States had demonstrated a level of critical use of 8,942,214 kilograms of methyl bromide. However, the Parties only authorized the United States to produce up to 7,659,000 kilograms of methyl bromide for critical uses in 2005 with the understanding that the United States

would likely have stocks available. EPA is proposing to issue critical use allowances (CUAs) for new production and import for the agreed critical-use categories at a level not to exceed any amounts of methyl bromide authorized by the Parties to be produced and imported to satisfy critical uses. In the event that EPA determines that the available stocks are greater than the difference between critical use levels and authorized production, EPA is proposing to adjust the CUAs issued by the additional amount of available stocks relative to the level of production and import authorized by the Parties.

As discussed in the Technical Support Document, this methodology (AS = (ES + B) − E1 − E2 − C − N − D), yields a range of methyl bromide available from existing stocks from 5 percent to 9 percent of U.S. consumption baseline (1,283,214 to 2,326,000 kilograms). Therefore EPA proposes to allocate critical use allowances (CUAs) authorizing 7,659,000 to 6,616,214 kilograms of new methyl bromide production or import for the agreed critical-use categories in 2005. This proposed quantity of new production or import is the difference between the total amount of methyl bromide use authorized by the Parties for the agreed critical-use categories in Decision Ex I/3, an amount of 8,942,214 kilograms, and the amount of available stocks of 1,283,214 to 2,326,000 kilograms. Since EPA is proposing a range of available stocks equal to or greater than 1,283,214 kilograms, which is equal to five percent of the U.S. baseline, final action may allocate somewhat less than the full amount of new production and import that was authorized by the Parties in Ex I/3.

In making the proposed determination of available stocks described above, EPA derived the total amount of existing stocks (ES) from information that EPA currently has on the amount of methyl bromide stocks held by a small number of companies in the United States as of the end of 2003. As described above, EPA is seeking to update its information on existing stocks (ES). Because no methyl bromide has been produced to date under the critical use exemption, the quantity of banked critical use methyl bromide (B) is zero in 2005.

The majority of the information EPA currently has on existing stocks was obtained through responses to Section 114 requests that EPA sent to a small group of companies. However, each of these companies claimed their responses to EPA's request to be Confidential Business Information. As a result, EPA is not authorized to release this information until it completes the process for evaluating these claims prescribed by the Agency's CBI regulations at 40 CFR part 2, subpart B. EPA is currently evaluating the merits of these claims in accordance with these procedures and expects to make a final determination on the CBI claims prior to finalizing the proposed critical use exemption regulation. Pending the completion of the process required under 40 CFR part 2, subpart B, EPA is treating the companies' methyl bromide stockpile information as CBI. In addition, EPA is treating the aggregate total of the stocks held by these companies as CBI because of concerns that publication of the aggregate amount could allow the small number of producers, imports, and distributors who know the size of their own holdings to calculate the amounts claimed as CBI by their competitors.

Because EPA has not yet completed its review of these CBI claims regarding methyl bromide stocks, this notice does not include the total amount of existing stocks (ES) and other quantitative values that EPA derived to determine available stocks using the methodology set forth above. EPA is concerned that the amount of existing stocks (ES) could be revealed by simple arithmetic if EPA were to publish its methodology for determining available stocks and quantify all the values used to derive the amount of available stocks except for the amount of existing stocks.

However, to provide the public with a meaningful opportunity to comment on its approach, EPA has published the estimated amount of available stocks in this notice and described the methodology used to derive this figure. EPA has also prepared a detailed Technical Support Document which elaborates on the reasoning and methodology that EPA used in developing estimates for each of the factors described above. Interested parties may find a copy of this document within EPA's electronic docket, Electronic Air Docket ID No. OAR–2003–0230, and EPA's paper docket, Air Docket ID No. A–2000–24. If, in accordance with the procedures set forth in 40 CFR part 2, subpart B, EPA determines that all or part of the information on existing stocks of methyl bromide stocks may be released to the public, EPA will place this information in the docket and quantify the other values in the formula.

To implement this limitation on total methyl bromide use in critical use categories on a national basis in 2005, EPA proposes to prohibit entities holding stocks of methyl bromide from selling or distributing such material to critical use categories for which new production and import is authorized under Decision Ex I/3, unless that entity holds a ''critical stock allowance'' allocated by EPA. EPA proposes to allocate ''critical stock allowances'' (CSAs) in an amount between 1,283,214 to 1,987,000 kilograms estimated by EPA to be available from stocks for the agreed critical-use categories. In the event that market forces reveal that EPA has under-predicted the amount of material available from stocks, EPA proposes that holders of critical use allowances (CUAs) may retire such allowances in exchange for additional critical stock allowances (CSAs) which would be issued by EPA.

The Agency seeks comment on an additional option for making the determination regarding the amount of methyl bromide available from existing stocks and seeks comments on this option and the proposal. For the 2005 calendar year, the Agency could make a determination that the amount of methyl bromide available from existing stocks is simply based on the difference between the limit on methyl bromide for critical uses (8,942 metric tons) and the limit on new production and import (7,659 metric tons) in the Decision Ex. I/3. This approach would reflect the fact that the Decision anticipates that each Party will determine how to take into account methyl bromide available from existing stocks.

EPA seeks comment on the amounts of critical use allowances (CUAs) and critical stock allowances (CSAs) proposed for allocation under the critical use exemption framework. EPA also seeks comment on its methodology for quantifying available stocks for 2005. In particular, EPA requests comment on whether it should employ the methodology for identifying available methyl bromide from existing stocks in a more qualitative than quantitative manner.

B. What Is the Proposed Regulatory Framework for Implementing the Critical Use Exemption and What Is a Critical Use Allowance (CUA) and a Critical Stock Allowance (CSA)?

EPA proposes to implement the critical use exemption by using an allowance system.

EPA believes an allowance system that regulates the production and import of critical use methyl bromide, as opposed to regulating the actual users of methyl bromide, is the simplest and most transparent method available for ensuring U.S. compliance with Protocol obligations. There are relatively few entities that produce and import methyl bromide that EPA regulates under the CAA and these entities are already

providing high quality reporting data to EPA that is verifiable and easy to track. In accordance with Protocol obligations and CAA requirements the EPA primarily regulates production and consumption (defined as production plus imports minus exports) of ozone-depleting substances. Given that the universe of producers and importers is considerably smaller than the universe of end users, and that producers and importers generally have more infrastructure for regulatory compliance than end users, this method of regulation is proven to be cost effective for ensuring U.S. compliance with obligations under the Montreal Protocol and requirements under the CAA.

Thus, EPA proposes to create critical use allowances (CUA) which would entitle the allowance holder (producer or importer) to produce or import 1 kilogram of methyl bromide for the exclusive purpose of satisfying the needs in agreed critical-use categories during the 2005 control period (calendar year). A CUA holder would expend one allowance for producing or importing one kilogram of methyl bromide.

In addition, in order to implement its obligations under the Protocol to control the amount of methyl bromide used in 2005 in the agreed critical use categories, EPA is also proposing to create critical stock allowances (CSAs). A CSA would entitle the allowance holder (producer, importer, distributor or applicator) to sell 1 kilogram of methyl bromide of available stockpiled material to an approved critical user. For example, a distributor with 100 CSAs may sell 100 kilograms of stockpiled methyl bromide to an approved critical user for use in an agreed critical use category of fumigation. EPA is proposing to prohibit the sale of methyl bromide stocks to an approved critical user for critical uses without a critical stock allowance. Thus, EPA would control the total amount of stocks that can be sold or distributed to the critical use categories authorized by the Parties through the allocation of a limited number of critical stock allowances.

The issuance of critical stock allowances (CSAs) does not obligate holders of stocks to make these quantities available to critical uses if they choose for practical or business reasons not to sell or distribute stocks to critical uses. However, EPA believes that these firms will respond to market conditions.

The CSA would be expended upon the sale of methyl bromide to an approved critical user, which would include instances where an approved critical user contracts with a distributor to provide fumigation services. A CSA would not be expended upon the transfer of methyl bromide from producers or importers to a distributor. See the additional discussion below on transfers of CSAs.

EPA seeks comments on the proposed allowance allocation framework for implementing the ''double cap'' agreed to in Decision Ex I/3 by the Parties to the Protocol

C. How Will Critical Use Allowances (CUAs) Be Distributed?

With today's action, EPA is proposing to allocate critical use allowances (CUAs) to producers and importers of methyl bromide on a pro-rata basis based on their 1991 consumption baseline levels. EPA proposes using historic 1991 baseline levels of consumption allowances to allocate CUAs because it is consistent with the method of allocation currently in place under the phaseout of methyl bromide and because EPA has easily verifiable baseline data for 1991.

EPA is proposing to use consumption baselines and not production baselines because critical use methyl bromide can be legally sourced in the U.S. through either domestic production or import. A critical use allowance (CUA), as described in Section VI..B. of this proposed rule, entitles the allowance holder either to produce or to import one (1) kilogram of methyl bromide. Therefore, EPA believes that the production baseline would be inappropriate to use since it would exclude importers from meeting the needs of critical uses.

Although EPA is proposing to distribute allowances to producers and importers based on the 1991 baseline, EPA recognizes an option of allocating allowances to producers and importers based on the volume of material marketed over a previous historic period, such as the immediate past four years. EPA does not have adequate data to create a new baseline of marketed material for methyl bromide producers and importers. EPA believes that acquiring sufficient, credible data of this nature would require the Agency to review all transaction records for each sale made by a methyl bromide producer or importer to a distributor, other supplier, or directly to end users. The Agency is concerned that it would take a long time to compile, receive and analyze such detailed information. In addition, such a process of compiling and submitting the information to make a new baseline determination would impose additional burden on the regulated community. This burden would likely be annual since the volumes of marketed material would not remain static from year-to-year after 2005.

EPA also recognizes another allocation method that would equally divide the number of allowances amongst those entities with historic production and consumption. EPA believes that this would be the simplest approach to allocating allowances. However, a simple division of the critical use allowances (CUAs) based on the number of entities involved would grossly distort historic and current relative market shares of the regulated entities; some would receive far more than their historic production and consumption and others would receive far less. Allocating allowances based on volume of recently marketed material may more closely reflect current market shares for each company, but, for reasons involving the annual burden on industry and government discussed above, this is not a desirable distributional mechanism. Therefore, EPA is proposing to allocate allowances based on the 1991 historic baseline that has been used for more than a decade in the U.S. to determine relative market shares among producers and importers. Allocating CUAs based on each company's 1991 baseline allowances (on a pro-rata basis) is a better reflection of market share than simply dividing the number of allowances by the total number of entities, and would be less burdensome than conducting a detailed recent historical market share analysis on a an annual basis. Using the 1991 historic baseline method for distributing CUAs is consistent with how EPA has allocated methyl bromide production and consumption allowances for the past decade under the methyl bromide phaseout.

During stakeholder meetings prior to development of this rule, one stakeholder suggested that EPA give the allowances to a third party not-for-profit entity who would in turn auction the allowances to the producers, importers, and distributors. After the producer, importer and distributor purchased the requisite number of allowances, these entities could then expend the allowances as described in Sections VI.B. and VI.N. of this proposed rule. The revenue derived from the auction would be used by the not-for-profit entity to fund transitions to alternatives where the alternatives are technically available but not economically feasible and research into alternatives to methyl bromide where no technically feasible alternatives exist to date. Under the allowance auction approach, no additional activities would be required of the end users but they would receive

a substantial benefit in the form of the transition fund described above in this paragraph. One of the economic benefits of the auction would be the redistribution of windfall profits that the producers and importers of methyl bromide currently receive under the phaseout of methyl bromide and that will be extended under the proposed critical use exemption. There are relatively few producers and importers of methyl bromide and the regulatory-induced scarcity created by the Protocol and CAA means higher prices can be charged and the additional profits are then received and kept by the producer and importer companies. Under an auction however, producers and importers would pay for the right to produce or import methyl bromide, thereby decreasing their windfall profits. Apart from a small amount of money to maintain operations of the not-for-profit entity, in theory the revenues derived from the auction could be transferred to end users of methyl bromide to ease the economic burden of their phaseouts.

A second stakeholder commented that an auction could be established as follows. EPA would distribute allowances to producers and importers as described in this NPRM which would entitle the companies to take two actions (a) produce and import kilograms of methyl bromide up to the number of allowances held, or (b) auction the allowances to critical end users. The end users would then turn in their allowances to the methyl bromide supplier at the time of purchase.

A similar allocation method that would address the windfall profit issue is as follows. EPA would distribute CUAs to end users. The users would then sell the allowances to producers and importers who would then be able to produce or import critical use methyl bromide. This distribution system would allow windfall profits to be captured by the users. Problems with this system are the same ones discussed with distributing allowances to a not-for profit entity as described in the preceding paragraph.

EPA seeks comments on today's proposed method for allocating critical use allowances (CUAs) and the many other options for allocating CUAs described above, as well as the magnitude of burden associated with any of the options that would adjust existing baselines.

D. How Are Critical Stock Allowances (CSAs) Distributed?

EPA proposes to allocate CSAs on a pro-rata basis between each of the identified entities that holds stocks. EPA will pro-rate the total amount of stocks that the Agency has determined are available between each known entity relative to the percentage of the total existing stocks they hold. For example, if company A holds one percent of all existing stocks and EPA determines that 1,000 kilograms of stocks are available, EPA will issue that company 10 critical stock allowances (CSAs). EPA believes this is the most equitable and least arbitrary method available for allocating CSAs.

Based on information currently available, EPA proposes to issue CSA's to the small group of companies that had stocks of methyl bromide in 2003. The amount allocated to each of these companies (and any other company that may come forward) will be determined in the final rule on the basis of comments and additional information collected by EPA. EPA proposes to allocate critical stock allowances (CSAs) on a pro-rata basis to the companies based on the amount of stocks held by each entity and the Agency's assessment of the available methyl bromide from stocks for critical uses.

In today's **Federal Register**, EPA is requesting additional information on the amount of available stocks in the United States. Elsewhere in today's **Federal Register** EPA is publishing a notice under Section 114 of the CAA calling for every entity to submit to EPA by September 23, 2004, information on their stocks of methyl bromide that are unrestricted (not for quarantine and preshipment and produced solely for export to Article 5 countries). An entity that does not submit information to EPA regarding stocks of methyl bromide they hold for sale or transfer to another entity as of August 25, 2004, will not receive critical stock allowances (CSAs) in the allocation made in the final rule. Such entities will not, therefore, be able to sell methyl bromide to any of the approved critical users in the 16 agreed critical-use categories defined in Decision Ex I/3 by the Parties to the Protocol.

As noted above, EPA is currently evaluating (in accordance with the procedures in 40 CFR part 2, subpart B) whether the inventory amounts held by individual entities are entitled to be withheld from the public as confidential business information. If EPA makes a final determination that the amount of stocks held by each entity is not confidential business information, then the final rule will contain the specific amounts of CSAs allocated to each entity on the basis of the information submitted to EPA. However, if EPA determines that individual company holdings of methyl bromide stocks are CBI, then the final rule will list the names of the entities issued CSAs without including the amounts. EPA would then confidentially inform each party of amount of CSAs allocated to them for 2005. Alternatively, EPA might be able to allocate CSAs on a pro-rata basis without revealing the amount of existing stocks held by each party. This is because the CSA allocation would be a pro-rata percentage of ''available'' stocks, which may be a lesser amount than the aggregate of existing stocks held by all the companies, and therefore would not reveal the actual amount held by each of the companies.

E. Are Allowances To Be Allocated on a Sector-Specific Basis or as One Lump Sum for All Sectors?

Decision Ex I/3 (4) states that, ''Parties should endeavor to allocate quantities of methyl bromide'' in accordance with the recommendations made by the Technology and Economic Assessment Panel (TEAP) as listed in agreed critical-use categories. EPA is therefore requesting comment on a sector-based allocation of allowances, as well as several other more flexible methods for making allocations.

1. Sector-Specific Allocation

EPA seeks comments on a sector-specific allocation of critical-use allowances (CUAs) and also a sector-specific allocation of critical stock allowances (CSAs). Under a sector-specific option, in 2005 EPA would create and allocate 16 different types of CUAs, one type for each critical use category authorized by the Parties. End users of methyl bromide made applications to EPA for an exemption and the U.S. government created a nomination of uses with similar circumstances to be considered by the Parties. The nomination aggregated similar circumstances of methyl bromide use into sectors. In a sector-specific allocation scheme, each producer and importer of methyl bromide would be allocated 16 different types of CUAs on a pro-rata basis in relation to their overall 1991 consumption baseline. For example, assume producer A has a consumption baseline that equals 50% of total allowable U.S. consumption. If the Parties authorized new production of 100 kilograms of methyl bromide for tomatoes and 20 kilograms of methyl bromide for flower nurseries, EPA would allocate 50 tomato critical use allowances (tomato CUAs) and 10 flower nursery critical use allowances (flower nursery CUAs) to company A. *See* Section VI.F. below for the proposed sector-specific allocation of

CUAs to individual producers and importers. The methyl bromide produced or imported with a tomato CUA could only be sold and used for growing tomatoes by an approved critical user that has the limiting critical conditions cited as the basis for the critical methyl bromide need in the nomination that was subsequently authorized by the Parties.

EPA recognizes that not all allowance holders (producer/importers) may want or need allowances of all types. For example, some allowance holders may supply only certain geographic markets or certain sectors. If EPA were to implement an allocation scheme, such as a sector-specific system, that is more restrictive than the current market, EPA would permit allowance trading amongst allowance holders. For instance, a tomato CUA holder in Region A would be able to trade with a tomato CUA holder in Region B; however, a tomato CUA holder would not be allowed to trade with a strawberry CUA holder in Regions A and B. Section 607 of the CAA allows for trading in part to encourage rationalization in the industry. It would be difficult for EPA to know exactly which company services which particular group of end users. However, the market-based mechanisms (transfers of allowances) described later in this preamble may rectify such issues under a sector-specific allocation scheme.

EPA believes that an allocation scheme that is more restrictive than the ''lump sum'' approach described below, such as the sector-or applicant-specific allocation, would provide greater assurance to each sector or group of applicants that some defined amount of methyl bromide would be available for that particular user group. However, under a sector-or applicant-specific system, if the user group did not use its entire allowable amount of methyl bromide, it would not be available for other approved critical users. So too, if a group needed more methyl bromide because they had a particularly bad pest infestation or demand for their product suddenly increased, the group would not be able to secure additional quantities without first seeking approval from the Parties during the annual nomination process and obtaining a higher allocation through EPA's subsequent notice-and-comment rulemaking which is resource and time intensive. A more restrictive sector-or applicant-specific allocation provides more certainty to each group but at the cost of flexibility.

2. Lump Sum Allocation

EPA requests comment on the option of creating one pool of CUAs and one pool of CSAs that can be used to supply critical use methyl bromide across sectors in what is known as a ''lump sum'' or ''universal'' approach. This means that critical use methyl bromide produced or imported with CUAs could be used for any of the agreed critical-use categories. Likewise, with a lump sum allocation of critical stock allowances (CSAs), the limited inventory that is available for sale into the critical use market would be for any of the agreed critical-use categories.

Under a universal allocation system, EPA anticipates that the actual critical use will closely follow the sector breakout listed by the TEAP and incorporated into Decision Ex I/3. The TEAP recommendations are based on data submitted by the U.S. which in turn are based on recent historic use data under the current methyl bromide phaseout market which is a ''universal'' system. In other words, the TEAP recommendations agreed to by the Parties are based on current use and the current uses are taking place in a marketplace where all methyl bromide users compete for the lump sum. Thus, EPA expects that 2005 use under a universal approach will look similar to the TEAP recommendations and annex II a in Decision Ex I/3. To the extent that any discrepancies between expected and actual use in 2005 occurs, a later section of today's proposed rulemaking describes tracking and reporting requirements that will help verify actual use by sector and help refine future U.S. nominations for critical use exemptions by highlighting differences between amounts nominated for a sector, recommended by TEAP, and agreed by the Parties and the actual use by that sector during the 2005 control period.

EPA would like to note that currently the methyl bromide market under the phaseout reductions (since 1994) operates as a ''universal'' or ''lump sum'' system. All end users of methyl bromide compete in the same marketplace for methyl bromide under the phaseout regulations. EPA believes that no critical user will face a situation where they cannot access approximately the same levels of methyl bromide that they have historically been able to access during the years of the phaseout because the U.S. government used recent historic data (1997–2001) in determining how much to nominate for each sectors critical use and this use data is based on amounts of methyl bromide obtained under a universal market.

In addition to the logistic and administrative reasons for implementing a universal allocation scheme, there are significant economic reasons to implement such a lump sum approach. The more restrictive the methyl bromide caps are, the less efficient the distribution of methyl bromide one would expect in the market. According to economic theory, under a universal cap, methyl bromide would go to those users with the highest marginal cost of substitution who would set the price of methyl bromide. This price of methyl bromide would lead those users with marginal costs of substitution lower than the price of methyl bromide to move instead to an alternative that may not have been previously economically feasible, thus resulting in a comparatively more efficient distribution of material and an overall lower cost of compliance for the regulated community as a whole. EPA estimates that the cost savings to the regulated entities of an illustrative sector-specific approach may be between $20 to $27 million when compared to a complete phase out of methyl bromide; the cost savings under an illustrative universal approach may be $22 to $31 million (see section VII a for more information on this analysis). Thus, the universal approach results in a greater cost savings to the regulated entities overall. A full discussion of this cost estimate may be found in the docket for today's rulemaking.

3. Applicant-Specific Allocation

EPA requests comment on making allowances specific to critical use exemption applicants. Under this option, in 2005 EPA would create and allocate 51 different types of CUAs and 51 different types of CSAs, one for each authorized critical use exemption applicant. Again, these allowances would be distributed to producers and importers in a pro-rated fashion and would be tradable amongst them. EPA recognizes that the more types of allowances we create, the more administratively and logistically complex the regulation becomes for the regulated community. With added administrative complexity generally comes a higher cost of implementation which may include costs associated with generating more specific information and greater inflexibility in the market.

4. Hybrid Allocation Options

EPA also is requesting comment on a hybrid approach that would create sector- or applicant-specific CUAs and universal or ''lump sum'' CSAs. EPA realizes that stocks may be held by

distributors and applicators. Unlike producers and importers whom EPA has historically regulated, some of these entities are smaller or more specialized. For example, EPA is aware of a distributor and custom applicator based on the East Coast that only services customers in the eastern part of the U.S. It is unlikely that this East Coast distributor and applicator will have any customers from the California fruit tree nursery sector that was authorized for critical use methyl bromide, since this is a region the distributor and applicator does not service. Thus, an allocation of fruit tree nursery CSAs would be of little practical use to this company. If the allocation were sector-specific, the company could trade its fruit tree nursery CSAs with one of the distributor/applicator companies that operate in California. However, if the company on the east coast was allocated only a small number of fruit tree nursery CSAs, it may not be worth the time and cost to find a suitable trading partner and engage in the trade. Therefore, EPA recognizes a hybrid option that would allocate sector-specific or even applicant-specific CUAs, but universal CSAs. The universal CSAs would alleviate problems associated with dividing small quantities of inventories scattered throughout the distribution system into many different types of end uses that may be of little use to a distributor in a specific geographic location. In addition, the universal CSAs would provide some flexibility to the end user community in the event that unanticipated market forces drive up demand in a particular commodity area or pest outbreaks in a particular crop are unusually high in a particular growing season.

EPA recognizes that another option would be to make CUAs and CSAs universal but require distributors and others who sell methyl bromide directly to end users to ''endeavor'' to make quantities of critical use methyl bromide available to their customers as prescribed in Decision Ex I/3 annex IIA. This option would rely on entities at the point of sale to ration methyl bromide to their customers the same way they have been doing under the phaseout—based on each client's historical purchases—in essence giving each sector (customer) the right of first refusal to a specific quantity of methyl bromide. However, under a scheme where distributors endeavor to make the critical use methyl bromide available in accordance with the quantities associated with specific-sectors in annex IIA of Decision Ex I/3, the methyl bromide, whether from CUAs or CSAs would still be ''universal,'' and distributors would have the flexibility to move quantities of critical use methyl bromide from one sector that does not need their full amount, to another sector that may have higher than anticipated need.

Finally, regarding the allocation of critical use allowances (CUAs) for new production and import of methyl bromide after the January 1, 2005, phaseout, EPA recognizes another hybrid option that would allocate a percentage on a sector-specific basis and a percentage on a universal, lump sum basis. This option of allocating a percentage of the CUAs as sector-specific and a percentage of CUAs as universal would provide some measure of assurance for each applicant as well as providing flexibility if a few of the sectors faced greater need for methyl bromide in the 2005 control period.

EPA wishes to note that the circumstances that are the basis for the U.S. sector nominations and the TEAP recommendations for specific sectors may have changed since that data was submitted. However, since EPA will not issue allowances for more critical use methyl bromide than the amount authorized by the Parties, this proposed rulemaking provides stakeholders with the opportunity to request flexibility in how allowances are distributed to accommodate changes in the marketplace that have transpired since the TEAP review. This NPRM represents part of EPA's endeavor to allocate methyl bromide in accordance with TEAP's recommendations. Thus, EPA seeks comment on the universal, sector-specific, applicant-specific, and hybrid methods for allocating CUAs and CSAs. In addition, for the hybrid approaches, EPA also requests comment on the portion of the authorized quantity that should be made sector- or applicant-specific, if any, and what portion should be made universal. EPA will evaluate and reconcile these comments and then publish a final rule that describes how allowances will be distributed.

F. How Many Critical Use Allowances (CUAs) and Critical Stockpile Allowances (CSAs) Will Producers, Importers and Distributors Be Allocated?

EPA proposes using one of the options described in the immediately preceding sections of this rulemaking notice to allocate critical use allowances and critical stock allowances to producers, importers, and distributers. We described two basic options for making the allocation of critical use allowances (CUAs)—a sector-specific allocation or a universal allocation—and hybrids of these two options. In addition, we propose a universal allocation of critical stock allowances (CSAs).

The Tables immediately below are illustrative examples of how a CUA allocation would appear under a universal allowance allocation scheme (Table I) as compared to a sector-specific allowance allocation scheme (Table II). For purposes of this illustration, we assumed an overall allocation of critical use allowances equal to 7,285,414 kilograms, which is approximately the middle of the range that we are proposing. When we take final action on this proposal, the individual allocations reflected in the following tables may increase or decrease by a proportionate amount depending on whether the total amount of critical use allowances that we issue is on the higher or lower end of the proposed range. Likewise, the amounts in the tables would differ if we were to employ one of the hybrid options to allocate allowances. In addition, the Agency is still collecting information in a Section 114 Information Request being published concurrently with today's action, so the final rule will take into account updated data on the amount of inventory that is available for critical uses.

The distribution of CUAs to specific producers and importers of methyl bromide for a universal allocation may appear as in Table I. The distribution of CUAs to specific producers and importers of methyl bromide for a sector-specific allocation may appear as in Table II. The proposed distribution of CSAs would be as follows for a universal allocation (Table III).

TABLE I.—CRITICAL USE ALLOWANCE ALLOCATION FOR THE CALENDAR YEAR 2005 (UNIVERSAL)

Company/universal allocation	Number of critical use allowances (kilograms)
Great Lakes Chemical Corporation	4,427,693
Albemarle Corporation	1,820,736
AmeriBrom, Inc.	1,005,814
Trical, Inc.	31,171
Total	7,285,414

TABLE II.—CRITICAL USE ALLOWANCE ALLOCATION FOR THE CALENDAR YEAR 2005 (SECTOR SPECIFIC)

Sector-specific allocation approved critical-use sectors	Number of critical use allowances (kilograms) for each company for each sector			
	Great Lakes Chemical Corporation	Albemarle Corporation	AmeriBrom, Inc.	Trical, Inc.
Chrysanthemum cuttings—rose plants	14,563	5,989	3,308	103
Curcurbits—field	588,133	241,850	133,603	4,141
Dried fruit, beans and nuts	42,955	17,664	9,758	302
Eggplant—field	36,423	14,978	8,274	256
Forest tree nurseries	95,323	39,198	21,654	671
Fruit tree nurseries	22,678	9,325	5,152	160
Ginger production—field	4,555	1,873	1,035	32
Mills and processors	239,155	98,344	54,327	1,684
Orchard replant	349,660	143,785	79,430	2,462
Peppers—field	537,381	220,979	122,074	3,783
Smokehouse ham	449	185	102	3
Strawberry fruit—field	908,020	373,392	206,269	6,393
Strawberry runners	27,227	11,196	6,185	192
Sweet potato— field	40,023	16,458	9,092	282
Tomato—field	1,418,739	583,408	322,287	9,988
Turfgrass	102,409	42,112	23,264	721
Total	4,427,693	1,820,736	1,005,814	31,173

TABLE III.—CRITICAL STOCK ALLOWANCE ALLOCATION

Company	Number of critical stock allowances (kilograms)
Company A	Reserved, pending resolution of CBI claim and Section 114 request.
Company B	Reserved, pending resolution of CBI claim and Section 114 request.
Total	1,656,800

G. What Are the Tracking Requirements for a Sector- or Applicant-Specific Allocation?

In the event that EPA puts in place a final rule that issues sector- or applicant-specific allowances, EPA must devise a system that would ensure compliance with the sector/applicant level caps. EPA believes that tracking types of allowances expended (*e.g.* pepper CUAs) in order to ensure compliance with a sector cap is essentially an accounting question and therefore describes a system that controls production and import at a sector- or applicant-level through different types of CUAs. EPA is proposing a system where entities in the supply chain such as producers, importers, and distributors would create and keep an on-going log of the amount and, if the final rule allocates on a sector- or applicant-specific basis, the type of critical use methyl bromide (*i.e.*, eggplant CUAs), on a per kilogram basis, acquired and sold during the year. In addition, entities that acquire critical use methyl bromide from a supplier would sign a self certification form indicating that they understand they are taking possession of a certain number of kilograms of critical use methyl bromide of a specific type. EPA believes that it is the responsibility of the distributor or other supplier to place orders with producers or importers for critical use methyl bromide of the appropriate type to meet the needs of their customers which means that a distributor may have to call more than one company to find the correct type of material in sufficient quantity to meet demand (*see* Sections VI.L. and VI.M. for more information on record keeping and reporting requirements).

During the public meetings on potential allocation framework options held during the summer of 2003, a participant suggested that EPA require the use of a database system to track critical use methyl bromide. Currently, a real time database system is being used in the state of California to track the use of 1,3-dichloropropene and ensure that the township caps are not exceeded. Under this option, EPA would require registrants to populate the database with information on the allowable critical uses, the approved critical users, and the amount of critical use methyl bromide produced, imported or available from critical stockpiles. Distributors and applicators would consult the database and reserve a specific amount of critical use methyl bromide when an order is placed for the material or for fumigation with critical use methyl bromide. The reservation would freeze the amounts of critical use methyl bromide for 14 days—at which point the company that made the reservation would lose its reservation unless it indicated that the material had already been used in a fumigation. This database could be created by EPA through a contractor or EPA could require regulated entities to utilize existing commercial database programs. EPA believes that producers, importers, distributors, and applicators would likely have to make some capital expenditures to be able to use the database for tracking purposes. EPA believes that the database approach would provide high quality use data on critical use of methyl bromide and that it could be used under a sector specific or applicant specific approach to ensure that distributors and other points of sale do not exceed total allowable amounts of critical use methyl bromide for that particular use. EPA seeks comment on the use of a commercially available database system to track the sale of critical use methyl bromide.

H. How Do ''Approved Critical Users'' Acquire Methyl Bromide Under Today's Proposal?

With today's action, EPA is proposing that approved critical users (end users) within an agreed critical-use sector, that also have the ''limiting critical conditions'' for their specific circumstances of use, acquire methyl bromide following a system nearly identical to the existing procedures under the quarantine and preshipment exemption (QPS) to the phaseout of methyl bromide (68 FR 237 (January 2, 2003)). The phrases ''approved critical user'' and ''limiting critical condition'' are further discussed below in Sections I. and K., respectively. EPA proposes that approved critical users of methyl bromide who wish to acquire critical use methyl bromide, or who contract for

fumigation with critical use methyl bromide, will self certify that they are approved critical users at the time of purchase. The certification requirement would be part of the reporting and recordkeeping requirements set forth in section 82.13 of its regulation.

To implement this regulation, EPA will create a form that an approved critical user will complete with basic information about the user (name, location of fumigation, consortium, etc), the number of kilograms to be purchased and the area to be treated, the agreed critical-use category (*i.e.* tomatoes, bean storage, etc.), and a check list of the applicable limiting critical conditions approved by EPA and the Parties (*e.g.* karst topography, heavy to moderate nutsedge infestation). The form would be signed by the approved critical user (purchaser) of the methyl bromide and given to the supplier of methyl bromide to indicate that the purchaser is acquiring exempted critical use methyl bromide from the supplier to use in accordance with the exemption and bears the full penalty of law for providing false information or for use that is not in accordance with the critical use exemption regulations.

EPA is proposing that producers, importers, and distributors will be prohibited from selling methyl bromide in critical use categories without obtaining a self-certification from an approved critical user. If an approved critical user seeks methyl bromide from stocks existing prior to 2005, then the user must find a supplier who holds a sufficient amount of critical stock allowances (CSAs) to sell methyl bromide to an agreed critical-use category. To obtain methyl bromide produced or imported in 2005 under the exemption, the approved critical user must go to a supplier who has methyl bromide newly produced or imported through expended 2005 critical use allowances (CUAs).

I. Who Is an Approved Critical User?

An approved critical user is entity who obtains the benefit of acquiring newly produced or imported methyl bromide that is dedicated for use in those use categories that have been agreed to be critical. Such users benefit under the critical use exemption because they have certainty that methyl bromide will be available for their critical needs because this newly produced and imported methyl bromide cannot be used for other purposes or by non-critical users. However, a condition for obtaining the benefit of this dedicated supply of methyl bromide after the phaseout date is that approved critical users will see their access to existing, previously unrestricted stocks of methyl bromide limited when necessary to ensure that total use of methyl bromide in critical use categories does not exceed the overall critical use cap established in Decision Ex. I/3.

EPA is proposing to define an ''approved critical user'' as an entity whose circumstance of methyl bromide use is covered by an application that is included in the U.S. nomination and subsequently authorized by a Decision of the Parties to the Montreal Protocol for a critical use exemption and then determined, through this EPA notice-and-comment rulemaking, to be eligible for exempted critical use methyl bromide (see Section A. of this notice of proposed rulemaking). Thus, EPA proposes to define an ''approved critical user'' as a person meeting the following two criteria:

(1) The user, for the applicable control period, applied to EPA for a critical use exemption or is a member of a consortium that applied for a critical use exemption for a use and location of use that was included in the U.S. nomination, authorized by a Decision of the Parties to the Montreal Protocol, and then finally determined by EPA in a notice-and-comment rulemaking to be a critical use in that location, AND

(2) The user has an area in the applicable location of use that requires methyl bromide fumigation because the area is subject to a limiting critical condition.

To summarize, EPA proposes that in order to qualify as an approved critical user, you must satisfy the following conditions: (1) You must have submitted or belong to a group that submitted an application to EPA for a critical use exemption for the specific control period; (2) the use and circumstances of use included in your application must have been nominated by the U.S. for a critical use exemption; (3) the Parties to the Protocol must agree in a Decision that your use and circumstance is a critical use and then, (4) through this notice-and-comment rulemaking EPA must identify your use as a critical use and your circumstance as a limiting critical condition. EPA requests comment on the proposed criteria for being an ''approved critical user'' described above and, in particular, comment that addresses these criteria in the context of the language of Decision IX/6 and Decision Ex I/3.

The Agency recognizes there may be other ways of defining an ''approved critical user'' in the context of Decision IX/6 and Decision Ex I/3, such as the following: (1) Not including criterion number two above (the limiting critical condition); (2) not including criteria numbers one and two above and instead defining approved critical user broadly to include any user in one of the agreed critical-use categories in Annex II.A. of Decision Ex I/3. We request comment on whether such an alternative definition of ''approved critical user'' would be more appropriate and consistent with Decisions IX/6 and Ex. I/3.

J. Can New Market Entrants or New Consortia Members Be Approved Critical Users?

EPA proposes that an approved critical user can include a member of a consortium during the control period even if the user was not a member at the time the application was submitted to EPA. In today's proposal, EPA is defining consortium as an organization representing a group of methyl bromide users that has collectively submitted an application for a critical use exemption on behalf of all members of the group. The members of a consortium would be determined by the rules established by the consortium. Members could either be required to formally join the consortium (*i.e.*, by submitting an application or paying dues) or may automatically become members upon meeting particular criteria (*i.e.* a grower of a specific crop in a particular region). EPA does not believe that it is up to the Agency or to distributors and third party applicators of methyl bromide to discern between different types of consortium members.

For example, the Southern Forest Nursery Management Cooperative consists of a certain number of forest seedling nursery operators. The Cooperative made an application to EPA for a critical use exemption that only included its members. Therefore, only members of the Cooperative would qualify as approved critical users pursuant to the consortium's application. However, if a company that was not a member of the Cooperative at the time of the application in 2002 decided to join the cooperative in 2004, EPA is proposing that the company be eligible to access critical use methyl bromide available to members of the consortium once the exemption takes effect in 2005 since the company would be a member of the Cooperative during the control period.

A second example is the California Strawberry Commission, which made an application to EPA to cover all strawberry growers in the state of California. Because the initial application was made on behalf of all growers in that state, any strawberry grower in California regardless of the

date when he first entered the market is considered by EPA to be a member of the consortium. Thus, a new strawberry grower who enters the market in California in 2005 and who meets the limiting critical condition for the agreed critical-use category would be able to access the critical use methyl bromide under the framework set forth in today's proposal.

In summary, EPA proposes that an approved critical user may include an entity who newly enters the market of a crop/use that has a limiting critical condition; an entity who switches to a crop/use that has a limiting critical condition; an entity who increases production of a crop/use that has a limiting critical condition; or an entity who switches production of a crop/use with a limiting critical condition from one physical location to another. In each instance, such an entity would need to meet the limiting critical condition and qualify as a member of consortium that applied for and obtained a critical use exemption.

Under the second example described above, any consortium that applied for an exemption for a broad geographic group of users may in fact be encouraging free riders. However, EPA believes that those consortia that applied on behalf of an entire state or region in their initial application believe that all users in that location need a critical use exemption based on technical and economic criteria. Therefore, if a new user enters the market place in that same location, EPA believes that the user would have automatically become a member of the consortium as if he had entered the market at the time the application was made. Therefore, the only remaining relevant question is whether or not the new market entrant in the geographic area meets the limiting critical condition and therefore may be an approved critical user.

In public meetings, EPA received a suggestion from the affected community which called for allowing critical use exemptions to only be made available to those users who are ''users of record.'' A user of record was suggested to be an approved critical user who was engaged in production of a crop or commodity in a critically-exempted sector immediately prior to the control period. The effect of such a provision would be to require any entity that was not a user of record to use an alternative to methyl bromide for the first year it engages in crop or commodity production. After the first year, the new market entrant would become a user of record and would be able to avail himself of critical use methyl bromide. EPA believes that this system may provide an incentive for new entrants to try alternatives to methyl bromide. However, this system would be difficult to administer outside of the state of California where such information is already tracked by state regulators. In addition, critical use methyl bromide will only be available for those users who do not have any technically and economically feasible alternatives available to them; therefore, a requirement such as the one suggested would foreclose any new entrants altogether.

EPA believes that in order to accommodate the ever shifting marketplace, growers and other users of methyl bromide should be allowed to increase or move production as needed so long as total U.S. production and import of methyl bromide for use in a given sector remains under the limits authorized by the Parties and determined to be a critical use in the U.S. through notice-and-comment rulemaking. Therefore, EPA is proposing an option in today's notice that allows for shifts in the marketplace (market entry and exit, and rotation into new production areas) while still ensuring fairness to those groups who applied for a CUE. It is important to note that the amount of methyl bromide that may be supplied for critical uses in a calendar year (control period) will not increase even if the number of users or treated area increases. The only way the amount of methyl bromide available for critical uses will be increased is if the Parties authorize such an increase and EPA incorporates the increase into its phaseout regulation through notice-and-comment rulemaking.

Under the proposed framework outlined in this section, users who have the limiting critical condition but who are not users or members of a group of users that submitted an application to EPA, are not eligible critical users. For example, a consortium applied on behalf of certain raspberry nurseries in California and Washington. This use was determined by EPA to qualify for an exemption because of the limiting critical condition that there are no technically feasible alternatives which provide adequate control of pests for raspberry nursery propagative stock. If a raspberry nursery operator in California met the limiting critical condition but was not a member of the consortium and needed to buy methyl bromide, under the proposed option, they would not be an approved critical user because the application that was made to EPA was not on behalf of all growers in California, only certain identified companies. EPA did consider allowing such a person to acquire critically exempted material. EPA decided not to propose this option in order to discourage free riders who did not invest the time and effort to apply for an exemption or even join a consortium that submitted an application. EPA understands that users who applied for an exemption sometimes spent hundreds of hours preparing an application for a critical use exemption. EPA recommends that users who did not submit an application or are not part of a consortium, consult with USDA or EPA immediately to determine if they could be included in the next U.S. nomination of critical users. Such users should also consider contacting any consortium that applied for an exemption for their use category. EPA is seeking comment on this manner of treating new market entrants and users of methyl bromide that were not part of the consortia or companies that submitted applications for critical use exemptions.

K. What Uses and ''Limiting Critical Conditions'' Are Permitted Access to the Methyl Bromide Under the Critical Use Exemption?

A ''limiting critical condition'' is the basis on which the critical need for methyl bromide is demonstrated and authorized. The limiting critical condition placed on a use category reflects certain regulatory, technical or economic factors that either prohibit the use of feasible alternatives or represent the lack of a technically or economically feasible alternative for that use or circumstance. For example, EPA may determine that a critical use exemption for tomatoes is only necessary for areas of tomato production in karst topography even if the EPA received applications for all of U.S. fresh market tomato production. In this example, not all tomato growers would be eligible to acquire exempted critical use methyl bromide. Only those growers with production in an area with the limiting critical condition of karst topography would have access to the methyl bromide under the critical use exemption. Another example is as follows: EPA received applications for exemptions for all U.S. grain milling companies that are members of the North American Milling Association (NAMA). The Parties authorized the exemption because grain milling companies have a critical need for methyl bromide because the alternatives can not be used, in part, due to corrosivity to electronic equipment. Thus, one of the limiting critical conditions for this critical use category is the presence of sensitive electronic equipment subject to corrosivity from

fumigation with the alternative. All grain mills that are members of NAMA that have sensitive electronic equipment would be able to acquire and use critical use methyl bromide.

Some approved critical users have limiting critical conditions that are contingent. These ''contingent critical uses'' are those uses of methyl bromide which qualify as an approved critical use only if a specified condition has been met. For example, a number of potential critical use needs for methyl bromide in California currently use the alternative 1,3-Dichloropropene (1,3–D) in various formulations. This chemical is regulated by the state of California so that specific townships have limits on the amount of 1,3-D that can be used over a given time period. Certain of the agreed critical-use categories in Decision Ex I/3 may have a contingent need for critical use methyl bromide in the event that the township cap for 1,3–D has been reached or exceeded.

EPA proposes that producers and importers be allowed to produce and import critical use methyl bromide for contingent uses at any time during the control period. However, EPA is proposing that unused methyl bromide produced or imported for such contingent purposes will be deducted from the total number of CUAs that EPA makes available for the following control period (as it would be included in the consideration of inventory as factor B, because the unused methyl bromide would be considered in the estimation of available stocks for the subsequent control period).

Below EPA proposes the ''limiting critical conditions'' for each of the agreed critical-use categories in Decision Ex I/3 and refers commenters to the E-Docket where the U.S. nominations, additional responses to MBTOC, and a memo describing the determination process are available. EPA wishes to note that while we may, in response to comments, reduce the types and conditions of a critical use compared to what has been authorized by the Parties, EPA will not increase the quantities, and sectors, beyond those authorized by the Parties. Section 2H(5) of the Protocol limits the critical use exemption to those uses agreed upon by the Parties. The agreed critical uses for 2005 are reflected in Decision Ex I/3.

EPA based the proposed ''limiting critical conditions'' on the data submitted by critical use exemption applicants, as well as public and propriety data sources. The U.S. government, in developing the nomination, defined the limiting critical conditions for which exempted methyl bromide was being sought. The U.S. government used this data to determine if (a) the lack of availability of methyl bromide for a particular use would result in significant market disruption, and (b) if there were any technically and economically feasible methyl bromide substitutes available to the user. The analysis was conducted and described in the U.S. nomination of critical uses. This nomination was then sent to the Parties to the Protocol, and the Parties used this information as the basis for the decision which authorized critical uses.

Based on the data described above, EPA determined that the following uses with the limiting critical conditions specified below qualify to obtain and use critical use methyl bromide.

EPA proposes, based on the determination described in the U.S. nomination and its supporting documents, that users who are in a specific geographic location, identified below, or who are members of a specific industry consortia, identified below, or companies specifically identified below, are approved critical users provided that such users are subject to the specified limiting critical condition.

Pre-Plant Uses

Cucurbits

(a) Michigan growers with moderate to severe fungal pathogen infestation;

(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee, and Virginia growers with moderate to severe yellow or purple nutsedge infestation.

Eggplant

(a) Georgia growers with one or more of the following limiting critical conditions: Moderate to severe yellow or purple nutsedge infestation, moderate to severe nematode infestation and/or moderate to severe fungal pathogen infestation;

(b) Florida growers with limiting critical conditions: Moderate to severe yellow or purple nutsedge infestation and/or moderate to severe nematode infestation and/or moderate to severe fungal pathogen infestation and/or karst topography.

Forest Seedlings

Approved critical users listed below with one or more of the following limiting critical conditions: Moderate to severe fungal pathogen infestation, moderate to severe yellow or purple nutsedge infestation, and/or moderate to severe disease infestation.

(a) Members of the Southern Forest Nursery Management Cooperative limited to growing locations in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia;

(b) International Paper and its subsidiaries limited to growing locations in Arkansas, Alabama, Georgia, South Carolina and, Texas;

(c) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, South Carolina, Oregon and, Washington;

(d) Public (government owned) seedling nurseries in the states of California, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, Utah, Washington, West Virginia and, Wisconsin;

(e) Members of the Nursery Technology Cooperative limited to growing locations in Oregon and Washington; and

(f) Michigan seedling nurseries.

Ginger

(a) Hawaii growers with the limiting critical condition of moderate to severe nematode infestation and/or moderate to severe bacterial wilt infestation.

Orchard Nursery Seedlings

Approved critical users listed below with one or more of the following limiting critical conditions: Moderate to severe nematode infestation, medium to heavy clay soils, and/or a prohibition on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative;

(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's raspberries and their contract growers in California and Washington).

(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers.

(c) Members of the California Association of Nurserymen-Citrus and Avocado Growers.

Orchard Replant

Approved critical users listed below with one or more of the following limiting critical conditions: Replanted (non-virgin) orchard soils to prevent orchard replant disease, and/or medium to heavy soils, and/or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.

(a) California stone fruit growers.

(b) California table and raisin grape growers.

(c) California walnut growers.

(d) California Almond growers.

Ornamentals

(a) Yoder Brothers Inc. for use in chrysanthemum production.

(b) California rose nurseries prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached;

Peppers

(a) California growers with the limiting critical conditions of moderate to severe fungal pathogens, and/or moderate to sever disease infestation, and/or moderate to sever nematode infestation, and/or moderate to severe yellow or purple nutsedge infestation, and/or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached;

(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee and Virginia growers with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge infestation, and/or the presence of an occupied structure within 76 meters of a grower's field the size of 100 acres or less;

(c) Florida growers with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge infestation, and/or karst topography;

Strawberry Nurseries

(a) California growers with one or more of the following limiting critical conditions: moderate to severe black root rot or crown rot, moderate to severe nematode infestation, and/or moderate to severe yellow or purple nutsedge infestation;

(b) North Carolina and Tennessee growers with the presence of an occupied structure within 76 meters of a grower's field the size of 100 acres or less;

Strawberry Fruit

(a) California growers with one or more of the following limiting critical conditions: moderate to severe black root rot or crown rot, moderate to severe nematode infestation, moderate to severe yellow or purple nutsedge infestation, a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached;

(b) Florida growers with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge, and/or karst topography;

(c) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee, Virginia, Ohio and, New Jersey growers with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge, and/or the presence of an occupied structure within 76 meters of a grower's field the size of 100 acres or less;

Sweet Potatoes

(a) California growers with the contingent limiting critical condition of a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached;

Tomatoes

(a) Michigan growers with moderate to severe disease and/or fungal pathogens;

(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee and Virginia growers with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge infestation, and/or the presence of an occupied structure within 76 meters of a grower's field the size of 100 acres or less;

(c) Florida growers with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge infestation, and/or karst topography;

Turfgrass

(a) U.S. turfgrass sod nursery producers for the production of industry certified pure sod.

(b) U.S. golf courses establishing sod in the construction of new golf courses or the renovation of putting greens, tees, and fairways.

Post-Harvest Uses

Food Processing

Approved critical users listed below with one or more of the following limiting critical conditions: older structures that can not be properly sealed to use an alternative to methyl bromide, and/or the presence of sensitive electronic equipment subject to corrosivity;

(a) Rice millers in Arkansas, California Louisiana, Florida, Missouri, and Mississippi.

(b) Pet food manufacturing facilities in the U.S.

(c) Kraft Foods.

(d) Members of the North American Millers' Association.

Commodity Storage

(a) Smokehouse ham curing in facilities owned by Gwaltney of Smithfield.

(b) Entities storing walnuts, beans, dried plums, and pistachios in California with one or more of the following limiting critical conditions: rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 days or less) notification for a purchase, and/or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

L. What Are the Reporting Requirements?

In today's action, EPA is proposing that producers and importers of critical use methyl bromide submit quarterly reports to EPA on the number of kilograms of critical use allowances (CUAs) expended and unexpended. In addition, those entities that sell critical use methyl bromide to end users shall report to EPA on an annual basis, the total amount of methyl bromide sold to each sector during the control period. For example, a distributor would submit an annual report to EPA that he sold 1,000 kilograms of critical use methyl bromide for pre-plant tomato fumigation and 500 kilograms of critical use methyl bromide for pre-plant strawberry fumigation. EPA is proposing this reporting on sale of methyl bromide to end-users on a sector-by-sector basis regardless of whether the final rule makes CUA and CSA allocations on a lump sum or sector-specific basis, because the Agency believes the sector-specific sales information will help improve the quality of data in future U.S. nominations for critical use exemptions. EPA is also proposing that data on sales be reported on a sector-specific basis to ease the burden for future applicants for critical use exemptions and to simplify U.S. government efforts to assemble and verify data concerning the amount of methyl bromide used in a sector and/or geographic region. EPA is further proposing that producers, importers, distributors and applicators allocated critical stock allowances (CSAs) file quarterly reports to EPA on the number of expended and unexpended CSAs based on the amount of methyl bromide stocks sold during the quarter to an approved critical user (from whom a self-certification was received).

Information collection as proposed above is authorized under Sections 603(b), 603(d) and 614(b) of the CAAA. EPA believes the reporting requirements outlined above are necessary in order to meet U.S. reporting obligations under Article 7 of the Protocol and CAAA reporting requirements to Congress under Section 603(d).

M. What Are the Record-Keeping Requirements?

EPA proposes that producers, importers, and distributors of critical

use methyl bromide maintain self certification records from buyers (typically wholesale buyers) for 3 years, along with other transactional records such as invoices and order forms. EPA proposes that distributors, third party applicators, and any other entities that directly sell critical use methyl bromide or fumigation services to approved critical users, keep self-certification records signed by the buyer of the critical use methyl bromide (whether from expended CUAs or from expended CSAs) on file for 3 years, along with other transactional records such as invoices and order forms.

EPA believes that mandatory record keeping requirements create a disincentive for the illegal traffic of controlled ozone depleting substances (ODS). In some instances, the phaseout of other chemicals regulated under Subchapter VI of the Clean Air Act (CAA) has resulted in a vigorous black market for the illegal sale of ODSs. The United States is in close proximity to developing countries who have not yet phased out of methyl bromide and who therefore may have supplies of methyl bromide available to them at a lower price than methyl bromide in the U.S. This price disparity between physically nearby markets could result in an incentive to illegally re-import methyl bromide into the United States. Unlike other ODS, the shipment, sale, and use of methyl bromide is tightly controlled under other statutes such as FIFRA making such activities not only dangerous but difficult to undertake. Therefore, EPA does not anticipate that a significant black market will develop in the United States for illegally produced or imported methyl bromide. Stringent record-keeping requirements under the CAAA that bear stiff penalties for violation on the creation, import, and sale of methyl bromide for critical uses will, EPA believes, further dampen interest in the illegal trade of methyl bromide. EPA seeks comment on the ways to discourage the development of a significant black market through record-keeping activities.

N. How Often Will Critical Use Allowances (CUAs) Be Distributed and How Are Allowances Expended?

EPA proposes to allocate critical use allowances (CUAs), through notice-and-comment rulemaking, on an annual basis (calendar year) consistent with authorizations by the Parties and Section 604(d)(6)of the CAAA. To the extent that the Parties continue to identify a need for controls on available stocks, the Agency will also allocate critical stock allowances (CSAs) on an annual basis. EPA proposes to allow producers and importers to expend their critical use allowances (CUAs) for production and import of methyl bromide at any time during the control period (calendar year) so as to avoid disruptions in the supply of methyl bromide. However, as with other allowances under EPA's phaseout program for ozone-depleting substances, EPA is proposing that companies would only be able to expend CUAs during the specified control period (calendar year)—for today's proposed action that would be during 2005. In other words, there would not be any banking of unused critical use allowances (CUAs) from control period to control period. If the Parties' decision authorizing 2006 critical use exemptions is specific about controls of available stocks, then the Agency would discuss such a control in its notice-and-comment rulemaking for the 2006 allocations.

In developing today's action, EPA also recognizes other options for addressing concerns about the need for mid-year adjustments in allocations of CUAs and CSAs. One option would issue half of the allowances at the beginning of the control period and then the remainder of the allowances six months into the control period, or, some other percentage split for two separate allocations. Under this option, EPA would publish an annual rulemaking before the start of the control period indicating how many allowances of each type could be expended in the first two quarters of the year and how many allowances of each type could be expended in the later two quarters of the year. EPA also notes that complete information on stocks of methyl bromide held on December 31st for a given year would not be reported to the Agency until 45 days after December 31st, which might mean the determination of available stocks could be designed as a two-step process that could result in mid-year allocations for a control period. In this second allocation of the remainder of allowances, EPA could, if necessary, adjust the relative percentages of critical use allowances and critical stock allowances to ensure that critical needs are satisfied for the control period if EPA's initial projection of available stocks is later found to be inaccurate. The combined total of critical use allowances issued for the control period would not exceed the cap on new production and consumption set forth in a Decision of the Parties. Another option would be to allocate both CSAs and CUAs at the beginning of a control period but the CSAs would expire in a short time frame and the unexpended CSAs would, through rulemaking, be allocated as additional CUAs up to the limit for new production and import authorized by the Parties. EPA notes there are many steps in publishing rulemakings, many of which can be time consuming. Publishing two rulemakings to allocate allowances for a given year might result in a lapse in available allowances and therefore a disruption in supply. Publishing two rulemakings for each calendar year would also introduce much greater uncertainty into the market. The Agency recognizes that an alternative approach might be to base the determination of available stocks on a ''fiscal'' year from September 31st to September 31st, and then publish a single allocation rulemaking for the subsequent calendar year. EPA requests comment on these options and whether any of them address concerns regarding the availability of sufficient critical use methyl bromide that were raised by entities in sectors who fumigate later in the calendar year and other issues regarding the supply chain for methyl bromide and the data available for subsequent allocation rulemakings.

EPA proposes to allow producers and importers to expend (use) their allowances for production and import of methyl bromide at any time during the control period so as to avoid disruptions in the supply of methyl bromide (*see* Section VI B. above regarding ''expending'' allowances). However, EPA also recognizes an option that would permit allowances to be expended only when an order for methyl bromide had been placed by a distributor or some other purchaser of methyl bromide, making a so-called ''redeemable'' allowance system (*see* Section VII. on a redeemable allowance system). However, EPA believes that such an approach is unlikely to result in significantly less critical use methyl bromide production, importation and stockpile draw down, and would be more disruptive to the methyl bromide market.

EPA is proposing to allow producers, importers, distributors, applicators, and other entities that hold critical stock allowances (CSAs) to expend their stockpile allowances by selling a corresponding amount of methyl bromide stocks, at any point during the control period. Likewise, the Agency is proposing that producers and importers allocated critical use allowances (CUAs) would be able to expend their allowances to produce or import methyl bromide for the agreed critical-use categories at any time during the control period (calendar year). This approach is preferred because producers and importers need a certain amount of time

to actually manufacture, and bring to market, quantities of methyl bromide. Furthermore, producers and importers need to make business decisions regarding manufacturing and marketing well before an order is actually placed in order to efficiently batch their production and import operations. EPA will allocate CUAs and CSAs before the control period and the allowances, under today's proposal, may be expended at any point during the one year control period. On December 31st of the pertinent year, unexpended CUAs and CSAs disappear and the companies must be re-allocated allowances for the subsequent calendar year (control period). EPA seeks comments on today's proposal and the other options described above regarding when allowances are allocated and when allowances can be expended.

O. Can Allowances Be Traded?

In accordance with CAAA section 607, EPA proposes that producers and importers allocated critical use allowances (CUAs) be permitted to trade or transfer those allowances. EPA is proposing that CUAs would be transferable as other allowances for controlled ozone-depleting substances can be traded under existing regulatory provisions of the 40 CFR part 82, subpart A. Section 607 of the CAAA governs the allocation of allowances for the production and consumption of class I and class II ozone depleting substances and the transfers (trades) of such allowances. Paragraph (c) of section 607 requires that such transfers of allowances result in a lower level of production than if the trade had not occurred. In accordance with the requirements of section 607 of the CAAA, EPA is proposing an offset of one tenth of one percent of the amount of CUAs being traded that would be deducted from the transferor's allowance balance at the time of a trade. A one tenth of one percent offset is consistent with the offset required for the transfer of essential use allowances under the phaseout program for class I controlled ozone-depleting substances, which, like critical use allowances, permit the exempted production or import of ozone-depleting substances beyond a phaseout date.

Critical stock allowances (CSAs) are not used in order to produce or import methyl bromide but rather are rights to allowance holders to sell pre-existing supplies of methyl bromide to the critical use market. Because CSAs govern the amount of existing material that can be sold, EPA is not proposing to require an offset associated with transfers of CSAs. If the holder of a CSA does not wish to sell his inventoried methyl bromide to the critical use market, he may sell his critical stock allowances (CSAs) to another CSA holder. The second CSA holder may then sell additional amounts of his methyl bromide inventory to the agreed critical-use categories specified in the rulemaking. There will be no offsets with trades of CSAs.

As noted earlier, a CSA is only expended when methyl bromide stocks are sold to an approved critical user. Thus, normal distribution of stocks of methyl bromide from a producer or importer to a distributor does not require a CSA. For example, if a producer sends a distributor 10,000 kilograms of methyl bromide stocks for sale to approved critical users, the producer would not need to expend CSAs to sell methyl bromide to a distributor. However, if the distributor intended to sell the methyl bromide to an approved critical user, the distributor would need to have sufficient CSAs to sell to a self-certifying approved critical user. If the distributor did not have sufficient CSAs, it might request that the producer transfer CSAs to the distributor as part of the sales transaction of stocks manufactured prior to January 1, 2005.

For consistency with the requirements governing other types of allowance transfers under the stratospheric ozone phaseout regulations, EPA proposes that the entity that is selling or giving allowances to another entity must file an allowance transfer form with EPA, which the existing regulation requires EPA process within 3 business days of receipt. The current regulation states that trades not processed by EPA in 3 working days are automatically approved. EPA established this short review period to encourage trading and ensure the Agency does not impede a fluid market. Today's action proposes that the information to be provided to EPA would include the total number of CUAs to be transferred and the name of the entity who is acquiring the allowances. *See* 40 CFR 82.9, 82.10 and 82.12 under the current regulations and below in the proposed regulatory text.

EPA is proposing an additional, special type of transfer for the methyl bromide critical use exemption program. EPA is proposing that a person holding critical use allowances (CUAs) could exchange them for additional critical stock allowances (CSAs) and this exchange would not require an offset. Under this option, the CUAs would be retired and EPA would issue additional CSAs in an amount equal to the amount of retired CUAs. This type of an exchange is consistent with Decision IX/6 and section 607 of the Clean Air Act because it results in use of more stocks and less production in a given control period. Because the Parties specified the maximum amount of critical use methyl bromide that may be derived from new production or import in Decision Ex I/3, EPA is proposing that CUAs may be converted into CSAs in this manner, but not vice versa. The Protocol and CAAA have no restriction on meeting more critical use needs from stocks. However, because Decision Ex I/3 limits the total amount of new production or import in 2005, there cannot be an exchange that would increase the number of CUAs.

EPA is seeking comments on the programs proposed for trading allowances and the options that are described above.

P. Are Allowances Bankable From One Year to the Next?

EPA proposes to prohibit banking of allowances (both CUAs and CSAs) from one year to the next because the controls under the Montreal Protocol and the Clean Air Act are calendar year ''control periods''. The U.S. has obligations under the Montreal Protocol and the Clean Air Act to control the production and consumption of ozone-depleting ''controlled substances'' on an annual, calendar year basis. To date, the authorization for exempted production and import of methyl bromide for agreed critical-use categories (Decision Ex I/3) is only for the 2005 calendar year. For the 2005 calendar year (control period), methyl bromide production and import is prohibited, except where otherwise exempted. In addition, the controls on the use of stocks by critical use sectors are also limited to only the 2005 calendar year.

The Parties may allow for multiple year exemptions in the future which may possibly allow for banking of allowances from one year to the next so long as it is within the duration of the exemption authorized by the Parties. In addition, it is not clear whether future Decisions on the critical use exemption will employ the double cap concept and effectively limit the amount of material that may be obtained from stocks for critical uses. EPA will revisit the issue of banking allowances under a multi-year scenario to reflect any framework changes agreed to by the Parties in future decisions.

Q. How Is Unused Critical Use Methyl Bromide Treated at the End of the Compliance Period?

The critical use exemption is currently an annual exemption program. The amount of new production and

import authorized by the Parties for 2005 must be produced or imported during that calendar year (control period) and not beyond December 31st of the pertinent year. However, methyl bromide produced or imported under the authorized exemption for a given year may still be unused at the end of the compliance control period, and could be used in subsequent years for critical uses. In the event there are inventories of methyl bromide produced or imported with CUAs remaining at the end of the control period, EPA proposes to include these quantities in the calculation of available stocks (factor B) in the determination of total CUAs to be allocated for the subsequent year.

EPA is proposing that if critical use allowances (CUAs) are allocated on a sector-specific basis, and the methyl bromide is produced or imported but unused in the control period, the material could be used only for the approved critical uses in the subsequent control period. This proposal would mean quantities produced or imported with expended CUAs not used in the relevant control period would, as stated in today's proposal, be taken into account in the calculation of available stocks for determining the level of new production or import for the subsequent control period (factor B in the algorithm discussed in Section VI.A. above). EPA proposes including unused critical use methyl bromide in the calculation of available stocks for the subsequent year. EPA also proposes restricting the use of critical use methyl bromide produced or imported with expended sector-or applicant-specific allowances, if allocated in that manner in the final rule, so that it could only be used in the sector for which it was allocated. For example, if methyl bromide was produced in a given year with expended eggplant CUAs, EPA could limit the use of unused quantities to only approved critical use eggplant uses in the subsequent control period. EPA seeks comments on the proposed method for accounting for unused critical use methyl bromide and the other options discussed above.

R. What Are the Enforcement Provisions Governing Critical Uses?

Section 113 of the CAAA controls enforcement activities for violations of requirements under Title VI. Under the Stratospheric Ozone Program regulations, EPA has historically defined each kilogram of unauthorized production or importation of controlled substances to be a separate violation of its regulations. *See e.g.* 40 CFR 82.4(a)(1) (''Every kilogram of excess production constitutes a separate violation of this subpart.''). Likewise, for the restricted distribution under exemption programs of controlled substances, the Stratospheric Ozone Program has also considered each kilogram of inappropriate sale for a use other than the designated specific exempted purpose to be a separate violation. To ensure U.S. compliance under the Montreal Protocol, EPA believes this approach remains justified for enforcement against producers, importers, and distributors of methyl bromide because these are large companies that have an ability to pay higher penalties and should face a substantial deterrent against producing, importing, and selling large quantities of controlled substances in excess of allowances or application limitations. In addition, these producers, importers and distributors are larger companies that typically have government affairs staff and retain legal counsel to advise them on their regulatory requirements. Thus, EPA will continue to define violations involving the unauthorized production, import, or sale of critical use methyl bromide on a per kilogram basis.

In the case of methyl bromide end-users, defining each violation on a per kilogram basis could mean a small farmer might face the potential of a very high penalty if she applied critical use methyl bromide in an unauthorized fashion. However, in assessing penalties under any enforcement action, the Agency takes into consideration the size of the violator, the economic benefit or advantage achieved from the violation and the ability of the violator to pay a penalty. Farmers in many of the agreed critical use categories typically use several hundred kilograms of methyl bromide to treat a single acre. If the Agency were to maintain that each kilogram that is wrongly used is a separate violation, then a farmer ordering and applying 3,000 kilogram in error to her 10 acre farm would face a potential maximum penalty of more than $97 million.

EPA recognizes that there is a difference in scale of possible violations and impact on compliance with U.S. obligations under the Protocol and is therefore proposing to define each single violation for the mis-use of critical use methyl bromide by an end-user differently than a violation by a holder of a CUA or CSA so it reflects the typical farm size and application rate of a person in the approved critical-use categories, and also reflects the economic benefit/advantage that accrues due to a mis-use violation by an end-user. EPA is proposing to define each violation associated with the improper use of critical use methyl bromide in increments of 200 kilograms. Taking the example of the farmer described above, who ordered and submitted a self-certification to use 3,000 kilograms of critical use methyl bromide in accordance with today's proposed restrictions, but then wrongfully applied the material, she would face 15 separate violations for this mis-use with a potential maximum penalty of $487,000. EPA wishes to note again that in assessing penalties, the Agency takes into account the circumstances of the violation, the size of the violator and their ability to pay. EPA believes it is important to retain a sizable potential maximum penalty so there is a deterrent against abuse of this exemption from the phaseout. EPA also notes that larger farms (that might be operated by sizable agricultural corporations) will also be ordering and certifying the proper use of large quantities of critical use methyl bromide and if the material were to be mis-used they should continue to face large potential maximum penalties. EPA requests comments on whether the proposed definition for an end-user's violation is appropriate for enforcement, especially in light of the fact that the person is self-certifying that they will use the critical use methyl bromide in accordance with today's proposed restrictions for the exemption.

Under today's action, EPA is not proposing to use the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorities or mechanisms to implement or enforce the critical use exemption. However, under today's action, nothing precludes parallel implementation and enforcement under FIFRA and other Federal, State, and local pesticide regulations.

VII. What Are Other Options on Which EPA Seeks Comment?

In the section below, EPA describes other options for creating and regulating the exemption for critical use methyl bromide beyond the phaseout through the allocation of ''permits'' directly to end-users of methyl bromide, in contrast to today's proposal to distribute critical use allowances (CUAs) to producers and importers, and critical stock allowances (CSAs) to all suppliers of methyl bromide. These permits, hereafter referred to as ''critical user permits'' (CUPs) would differ from the critical use allowances in the following manner. Critical user permits would be redeemed to buy one (1) kilogram of methyl bromide for an approved critical use whereas a critical use allowance (CUA) would be an allowance for the production or import of one (1) kilogram

of methyl bromide by a manufacturer or importer of methyl bromide.

EPA believes that the options described in Section VII of this proposed rulemaking would create a new burden on approved critical users of methyl bromide. A full analysis of the burden associated with providing permits to end users is described in the supporting analytical documents that accompany this rule. The supporting analysis primarily analyzed two options for who could hold critical use allowances, producers and importers or end users. Under a system that creates permits distributed to methyl bromide end-users, EPA estimated that the annual burden would be about $6.4 million per year. In contrast, a system designed to provide allowances only to producers and importers would cost about $2.2 million. For a more complete discussion of the supporting analysis, please see Section VIII.A of this proposal.

In conducting the analysis, in some cases EPA made only qualitative assessments due to uncertainty about the future price of methyl bromide and other unknown factors. In other instances, it was difficult to create a direct quantitative comparison on the de-regulatory benefit of one option compared to the other. EPA believes the options in Section VII would be substantially more burdensome for approved critical users (end-users) than the proposed option in Section VI. At the stakeholder meetings held over the previous year EPA received public comment to this effect. To the degree that not all potentially interested parties were able to attend these stakeholder meetings, EPA requests comment on these options to better understand if the benefits of these options outweigh the additional regulatory burden.

A. Distribution of Critical User Permits (CUPs) to End Users of Methyl Bromide?

Under the option of regulating downstream distribution of critical use methyl bromide through the allocation of critical user permits (CUPs) to methyl bromide end-users there are two options for initial distribution of CUPs.

One option, similar to the method used in Canada under their phaseout of methyl bromide, would involve the distribution of permits to end users. The second option would employ an auction system whereby the allowances would be sold to the user with the highest bid.

The first option, would involve distributing CUPs to end users based on historical information and would require individual farms and companies to provide data to EPA (see Section VIII.E for more detail on distribution of permits). EPA would then examine the data and would write an additional notice-and-comment rulemaking to distribute permits to each entity. This process would take between one and two years to complete, due the large number of critical use methyl bromide end-users (approximately 2,000 farmers or companies), so permits would not be available to end users until after the phaseout takes effect. In such a scenario, EPA would implement the CUPs beginning in 2007 and rely on an upstream system as described in Section VI as an interim control measure until 2007.

The second method to distribute CUPs would be an auction; which would circumvent the burden and time involved with directly distributing permits to end-users based on historitical data. However, the auction of CUPs, similar to a method where EPA uses historical data to distribute CUPs, would impose more requirements on end users than the proposed option. End users under the auction would be required to familiarize themselves with auction procedures, participate in the auction, keep records of all auction and CUP activities for three years, and report to EPA annually on the use of CUPs acquired. Under the proposed option, end users would not have any reporting or recordkeeping obligations except self-certification when placing a purchasing order. Again, similar to using historical data to distribute CUPs, there are timing concerns regarding the auction. The time taken to implement an auction would cause an implementation delay past January 2005.

In stakeholder meetings held by EPA over the summer of 2003, stakeholders universally commented that they wanted a simple regulation and one that would impose minimum burden on end users. This comment was regularly made in association with the two end-user permit options (CUP options), which stakeholders viewed as presenting significant burden on end-users without sufficient accompanying benefits.

Under either CUP scenario, EPA would abide by the parameters set by the Parties in the authorization of critical use exemptions. Decision Ex I/3 requests that Parties endeavor to allocate critical use permits according to the use categories recommended by the TEAP. The two types of auctions for distribution of CUPs could be an auction where all critical users would vie for permits or it could be separate sector-level auctions by approved critical use category. EPA may propose to be more restrictive than required under the Protocol, as interpreted by the Parties, but not less.

B. What Is a Critical User Permit (CUP) and Can It Be Traded?

A critical user permit (CUP) is a permit which would entitle the holder to obtain one kilogram of methyl bromide for use for approved critical uses. Once a user acquires an initial allocation of permits, whether through rulemaking or auction, EPA would allow the user to either redeem the permit to buy methyl bromide, hold that permit unredeemed until the end of the control period when it would expire, or sell the permit to another entity.

Although only approved critical users would be given CUPs initially, EPA could restrict the type of entity to whom approved critical users could sell permits. Allowing end-users to trade CUPs with brokers, trading firms, citizen groups and others might affect the methyl bromide market.

EPA has identified three additional ways that trades of CUPs might be governed: (1) Allowing trades only within a sector (only allowing a tomato trade with a tomato grower), (2) allowing trades of CUPs across sectors (a tomato CUP for a strawberry CUP), or not allowing end-users to trade their CUPs after the initial allocation (resulting in a more command and control approach).

C. Who Is Eligible To Receive an Initial Allocation of CUPs and Who May Use CUPs?

There are two options for who can receive an initial allocation of CUPs. The first option would only allow those entities included in an application to EPA to receive an initial allocation of CUPs. The second option would allow those users not explicitly covered by an application but who have the limiting critical condition to receive an initial allocation. Once an entity receives its CUP allocation, it can either use it to acquire critical use methyl bromide, or it can simply hold it (holding a CUP is addressed in Section VII. D below). There are also two options for who can use a CUP to acquire critical use methyl bromide, namely only allowing those entities included in an application to EPA to participate, or allowing those users not explicitly covered by an application but who have the limiting critical condition to redeem a CUP for methyl bromide.

EPA believes that it would be unfair to those groups that invested the resources in applying to EPA for an exemption if EPA adopted an option that would make an initial allocation of permits available to users who meet the

limiting critical condition but are not covered by an application. However, EPA believes that a hybrid approach which allows any user who meets the limiting critical condition to buy permits after the initial allocation would be reasonable in that the right of first refusal has already been given to those that applied for the exemption.

D. Who May Hold a CUP?

Even though only approved critical users would be able to obtain methyl bromide under the critical use exemption, EPA could allow any entity to hold permits. For example, EPA could allow citizen groups and brokers to hold permits, but not give such entities an initial allocation and not allow them to use or redeem the CUPs.

E. Methods for Distribution of Critical User Permits: Distribution Based on Data

EPA recognizes several methods for distributing CUPs to the end user community using entity-level historic use and/or operational information. One method would use entity-level historic methyl bromide use data to create a baseline against which CUPs would be allocated. Under this option, individual end users would have to provide 3 years of historic use data and documentation to EPA which would include total quantity (kilograms) of methyl bromide used in each year, the hectares or cubic meters treated annually, the formulation rates, and data on efforts to minimize use and emissions. Using these data, EPA would establish a straight average baseline and would pro-rate amounts of methyl bromide available to the sector by the total treated area requested by entities that submitted the additional data.

If a user has not been a historic grower or owner of the commodity for which he seeks an exemption but is now a member of a covered consortium, EPA is considering having that user submit documentation to support his plans to treat the specified acreage/volume. Alternatively, a new entrant might not be given an initial allocation but be allowed to buy and use CUPs from a willing seller so long as the entity met the limiting critical condition.

Another method for distributing CUPs would involve economic considerations for each entity. For example, EPA could distribute permits to those users with the highest cost, in other words to those end users with the greatest economic need. Alternatively, EPA is considering distributing permits to end users with the lowest cost, who would then be inclined to sell their permits to users who have a higher cost. In order for EPA to make a determination as to how to distribute permits under a scenario using cost criteria, individual entities would have to submit historic use data to EPA and individual entity cost data.

F. Submitting Individual Entity Data To Obtain Critical User Permits (CUPs)

Under an option involving the distribution of CUPs, users would be required to submit the additional data for baseline determination either with the annual critical use application or under separate cover to EPA. Each year, beginning in 2002, users interested in a critical use exemption have been required to submit a detailed application to EPA between August and September. A small number of users applied only on behalf of their operations alone and therefore for these users, EPA has sufficient use data on a per entity basis in order to create a historic baseline of methyl bromide use for a few entities.

Most users however applied for a critical use exemption as groups of similar users (*e.g.* all of tomato growers in Michigan). In these instances, EPA does not have the bulk of the baseline data needed to create per entity historic baselines of methyl bromide use.

Due to the amount of time it would take (a) for users to submit additional data and documentation to EPA and (b) for EPA to analyze the data and write a notice-and-comment regulation allocating baseline allocations, EPA would implement the CUPs beginning in 2007 and relying on an upstream system as described in Section VI of this proposal an interim control measure until 2007.

G. Methods for Distribution of Critical User Permits: Distribution Using Auctions

EPA notes that an auction could be used for distributing critical use permits (CUPs) to operations (users) that meet the critical use criteria. EPA understands that affected entities have expressed a strong preference for a simple regulatory mechanism for the critical use exemption. EPA believes that of all the options, an auction may be by far the most complex to design, would be unlikely to be in place in time for the beginning of the critical use exemption, and may impose a steep learning curve on affected entities.

EPA does not have statutory authority to set a price for methyl bromide under the Clean Air Act. Therefore, to implement an auction, EPA could only consider an option that did not have the government set a minimum or maximum price for material under the critical use exemption. EPA therefore is only considering auctions using a sealed bid method with no set minimum bid. Other bid options which EPA did not consider include the ascending bid or English auction and the declining bid or Dutch auction.

In a sealed bid auction, each bidder discloses the maximum bid they would offer and the number of permits they are seeking. The auctioneer then opens all of the bids and awards the permits to the highest bidders until there are no more permits left. The price of the last permit awarded could be used to set the price of all of the bids awarded (clearing price) or the price could be determined by the bid set by the bidder (''pay as you bid''). In an ascending auction bid, the auctioneer offers a losing bidder the chance to increase his/her bid. When the bidding has ended, the permits are distributed to the highest bidders. In a declining bid auction, the auctioneer sets a price for the permit at the high end of the spectrum. Bidders can then accept the price and buy permits or can wait and see if the price comes down. EPA believes that it only has authority for a ''pay as you bid'' auction.

To submit a bid, a user would first have to establish an account via a letter of credit or similar mechanism with the auctioneer or would have to submit a certified check for their maximum bid amount with their bid form. Information on the bid form would include name of bidder, contact information for bidder, name and contact information of the authorized representative if applicable, number of kilograms the bidder wishes to purchase at a given price, type of permits if applicable, location to be fumigated, a description of other crops or uses that would benefit from the fumigation (*e.g.* a double crop of peppers), and a certification form that any methyl bromide obtained will be used only for critical use purposes.

The bid price could be structured to include just the cost of the permit (the bid premium) or the cost of the permit plus the price of the actual methyl bromide purchased. In the former, the bidder only obtains the right to buy methyl bromide at a price to be set by the supplier; in the latter option, the price paid by the successful bidder includes the right to buy methyl bromide and the cost of the methyl bromide. However, since EPA does not have the authority to redistribute revenues from the auction, EPA only considered a bid price that covers the cost of the CUP (the right to buy methyl bromide) alone.

All revenues from the auction would be sent to the U.S. Treasury since EPA does not have statutory authority to capture the revenue for other purposes.

EPA is considering running the auction in house, having another federal entity run the auction, or allowing a third party to administer the auction. Each of these implementation schemes for operating the bidding process would award the CUPs simply on the basis of price. In the event that a third party were to run the auction, EPA examined the options of having the party run the auction either for a fee or as a gratuitous service to the government. If the auction would be run as the latter, the third-party would then be able to charge a reasonable administration fee from those in the user community that elected to participate in the auction.

H. Frequency of Auctions and Set Asides

In order to make the auction feasible, EPA believes that two auctions a year would be required, one shortly before the beginning of the control period and one three to four months after the new control period begins. The second, later auction would be required in order to ensure that quantities of methyl bromide authorized by the Parties to the Protocol in their meeting only two months before the control period and approved through rulemaking during the early part of the compliance period could be allocated to users

EPA recognizes that it could create a set-aside program to hold back CUPs from an auction and that there are options for the amount that could be held for the subsequent auction(s), and the numbers of times and dates during a year for subsequent auctions. Under such a program, between 10% and 50% of the total allowable amount, would be held in reserve for a second annual auction in order to accommodate those users who typically acquire methyl bromide later on in the season.

I. Other Methods for Distributing CUPs

Other options for distributing critical use permits (CUPs) would not entail EPA giving permits directly to end users of methyl bromide, such as giving the CUPs to the consortium that applied for an exemption. The consortium could then determine how they would like to distribute allowances to individual users, either through use of data or through an auction. However, there are several consortia that do not have any infrastructure to receive and distribute the permits and some consortia are not even legally incorporated entities. Alternatively, EPA is considering giving allowances to State governments to re-distribute using a method of their choosing. However, due to concerns about the possibility of creating an unfunded mandate, EPA has decided not to further consider such an option.

J. Tracking Permits

EPA is evaluating the feasibility of developing a web-enabled database program to allow for the tracking and trading of CUPs. Since almost 10 million CUPs could be issued based on the number of kilograms requested by the U.S. government for critical uses in the 2003 nomination, EPA believes that a new tracking system would have to be developed to facilitate the trading and tracking of CUPs. Each entity that applies for an initial allocation of CUPs would be required to create an account in the web-enabled database as well as entities that sell or distribute methyl bromide to end users and entities who acquire permits through trading. Once allocated, EPA would place CUPs in the account of the end user. All accounts would be frozen on an annual basis on December 31st for the annual true-up period during which time no transactions could take place.

K. Redeeming CUPs for Methyl Bromide

A CUP holder may redeem his permit with a methyl bromide supplier such as a custom applicator or distributor by transferring his permits to the supplier's account. To transfer the permits, EPA would require the permit holder to electronically transfer his permits to the supplier's account indicating the number of acres/square feet to be treated, location of area to be treated (address, coordinates, parcel ID number) and whether a second crop will benefit from the fumigation. The permit holder would then transfer the permits electronically to the supplier's account, at which point the permits would be deactivated automatically by the system. Automatically, an electronic mail notification would be sent to the supplier notifying him that the specified CUPs have been transferred to his account. The user would then print out a certification form that the material would only be used for the specific critical use, sign it and send it to the supplier before he or she could receive the methyl bromide. A supplier or end user would have ten business days to dispute the transaction with EPA in the event that an error was made by the permit holder in the transfer of permits.

L. Reporting Requirements for CUP Holders

CUP holders would be required to annually reconcile their accounts by submitting a written form to EPA no later than 15 days after the end of the control period, *i.e.* December 31st or the date when all unredeemed permits would expire. The form would be created by EPA and available on the EPA's methyl bromide website. CUP holders would be required to indicate how much critical use methyl bromide bought during the year has not been used and/or remains held in inventory for future use.

M. Interaction Between CUPs and CUAs

EPA could implement the CUP program as a stand alone program or in conjunction with a CUA and CSA program. If the CUP program were to be implemented as a stand alone program, CUP holders would sell their permits to producers and importers of methyl bromide at a time of their choosing. The producers and importers would not be able to produce or import methyl bromide until they held sufficient CUPs to match their production or import decisions. EPA believes that under such a system, it is likely that producers and importers would solicit CUPs early in the year in order to bundle them for planning the year's production or import. Producers and importers might be likely to pay more for permits they obtain early in the year since they seek certainty on the amounts they will be able to produce and import during the year.

Under the stand alone CUP program, EPA is considering two options for how permit holders would obtain methyl bromide. Under the first option, the permit holder would be entitled to receive 1 kilogram of methyl bromide for each permit sold. EPA believes that under this scenario, the price producers and importers would be willing to pay is likely to be lower than under the second option. Under the second option, a permit holder would sell his permit to a producer or importer and would then purchase methyl bromide at a later date through his normal supplier as a separate transaction following the procedures proposed in today's notice-and-comment rulemaking.

Under the stand alone CUP program, the reporting and recordkeeping requirements for producers, importers, distributors, custom applicators and fumigators would be required as described in Sections VI of this preamble. EPA understands that creating a stand alone CUP system for the creation of exempted methyl bromide could place some strain on the methyl bromide production system unless producers and importers were able to buy CUPs from permit holders several months in advance of the control period. However, due to the time it would take to allocate CUPs through a notice-and-comment rulemaking, it would be unlikely that sufficient time

would be available before the control period for producers and importers of methyl bromide to have sufficient certainty to make production decisions.

Under a combined option, in which EPA might allocate CUPs, as well as CUAs, and CSAs (as in the program described in Section VI of today's notice) the tracking requirements on usage and sector-specific limitations on CUAs and/or CSAs by sector might be able to be eliminated since these requirements, in part, are designed to ensure that the U.S. does not exceed the recommended amounts for each sector.

VIII. What Conforming Amendments Is EPA Proposing With Respect to Essential Use Allowances?

To make it easier for the public to read and EPA to update the allocation of critical use allowances and critical stock allowance each year, EPA proposes to create a new regulation at 40 CFR 82.8. This section number is currently reserved. EPA proposes to place the list of critical use allowance and critical stock allowance allocations in this section.

In addition, to be consistent with this improved formatting for the critical use exemption regulations, EPA also proposes to include the essential use allowance allocations in section 82.8. Moving these essential use allowance allocations to section 82.8 requires certain conforming amendments to sections 82.3 and 82.4(n) as reflected in the proposed regulatory text below.

IX. Statutory and Executive Order Reviews

A. Executive Order No. 12866: Regulatory Planning and Review

Under Executive Order No. 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

OMB has notified EPA that it considers this a ''significant regulatory action'' under Executive Order No. 12866 and EPA has submitted it to OMB for review. We will document changes made in response to OMB suggestions or recommendations in the public record.

EPA conducted an economic impact analysis (Economic Impact Analysis for Methyl Bromide Allocation in the United States, hereafter EIA) that attempts to assess the effect of allowing critical use exemptions on the regulated entities. The analysis is conducted relative to the complete phaseout of methyl bromide production and consumption in 2005 (consumption is defined as production plus imports minus exports). Therefore, any change in the existing regulations that allows for continued production and import of methyl bromide may be considered de-regulatory in nature, and will likely result in overall cost savings to the regulated entities. Note that this analysis focuses only on the effects to the regulated entities.

EPA looked at three illustrative alternatives for implementing the critical use exemption: (1) An upstream cap and trade allowance system which would give critical use allowances to producers and importers of methyl bromide; (2) an upstream cap and trade system with a downstream permit trading system where the permits are distributed to end users and; (3) an upstream cap and trade system with a downstream permit trading system where the permits are initially obtained through an auction. Alternative 1 mirrors the Agency's proposal; Alternatives 2 and 3 mirror the CUP option.

Given the illustrative nature of these alternatives, many assumptions are invoked. One of the critical assumptions used to generate the analysis is the assumed phaseout schedule. The analysis assumes that in 2005, the CUE exemption would equal 39 percent of the 1991 U.S. baseline consumption. By 2018, the analysis assumes that methyl bromide production and consumption would be phased out completely

EPA also assumes that under a universal approach, 80 percent of the total available amount of methyl bromide would go to the two largest groups of end users, tomatoes and strawberries. Eighty percent was used to reflect the total amount of methyl bromide originally requested by these applicants as a proportion of the amount requested by other applicants. See EIA for more discussion.

The incremental cost savings estimated for today's proposed rule includes two general components: cost savings from the continued use of methyl bromide as compared to use of a more expensive substitute (under the baseline), and the economic benefit associated with the increased crop yield obtained through use of methyl bromide instead of a less effective substitute (under the baseline). The analysis also estimates the administrative costs associated with each option (*e.g.*, reporting and recordkeeping).

The estimated cost savings are approximately $19 million to $31 million on an annual basis and $380 million to $600 million on a Net Present Value basis depending on the particular option and discount rate used (EIA, p. 126).

TABLE I.—ANNUALIZED AND NET PRESENT VALUE OF PRIVATE SECTOR COMPLIANCE COSTS FOR ALTERNATIVE 1*

[In millions of dollars]

Discount rate	Annualized costs		Net present value costs	
	Sector specific approach	Illustrative universal approach	Sector specific approach	Illustrative universal approach
3%	−$19.5	−$21.9	−$616.6	−$695.6
7%	−26.8	−31.3	−382.7	−446.8

* Timeline: 2005–2018.

There are two factors which affect these estimates: the size of the cap (*i.e.* the amount of critical use methyl bromide exempted) and how the cap is constrained (*i.e.* if there is one ''universal'' amount of methyl bromide made available to all approved critical users or if there is a sub-cap for each sector/commodity group).

The EIA addresses the question of whether or not a framework option that would create either an upstream cap and trade system (Alternative 1) or a downstream tradable permit system (Alternative 2) is more economically efficient (Alternative 3, the auction approach for allocating allowances, was not quantitatively analyzed in this EIA). The EIA concluded that in fact who holds the allowances has relatively little impact on the efficiency of compliance costs per se and that such costs are impacted more by the size of the cap and constraints on the cap as identified in the preceding paragraphs. Under both options, methyl bromide is ultimately purchased by the user of methyl bromide with the highest willingness to pay. The main driver of efficiency is whether or not methyl bromide goes to the highest value use within a commodity sector or if it goes to the use with the highest value across sectors. According to Chapter 5 of the EIA, however, there are some factors that could affect whether or not the options produce the same result in terms of consumption of methyl bromide by end users and in control costs, namely how smoothly the market functions under either option. For more information on the qualitative factors that would impact either option for who holds the allowances, as well as a discussion of the limitations associated with the analysis, please refer to the EIA available in docket OAR–2003–0230.

While option two is better than option one in compensating end users who give up their *de facto* ''rights'' to methyl bromide, the drawback to option two is the additional complexity in both administering the system and in complying with the system. The EIA estimates that the administrative burden for the regulated community and EPA under options one and two as follows:

TABLE 2.—ADMINISTRATIVE BURDEN OF ALTERNATIVES 1 AND 2

	EPA burden	Industry burden
Alternative One	[1] $25 k [2] 15 k	[1] $2,200 [2] 86 k
Alternative Two	[1] 2,100 k [2] 53 k	[1] 6,400 k [2] 2,000 k

Source: EIA pages 102 and 117.
[1] Annual.
[2] One time.

Because the general methodological framework of the model used for the analysis of the 2000 Phaseout Rule was retained to calculate the costs for today's proposed rule, and because the phaseout model relies on an engineering approach, the EIA is not well suited to predict the distribution of methyl bromide. In addition to this limitation, the analysis does not take into account the full array of alternatives to methyl bromide that are under development. Also, due to the limited nature of the analysis, the EIA does not explore how the costs savings would pass through the economy, and who (consumers and/or regulated entities) will eventually realize the cost savings.

Further details regarding the de-regulatory benefits of the proposed critical use exemption and a discussion on the relative merits of the two main options are available in the EIA which is docketed with this proposed rulemaking.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

EPA submitted an ICR to OMB concurrent with today's proposed rule. In the ICR, EPA characterizes the paperwork burden that industry may face as a result of today's proposed action. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1432.23.

The information collection under this rule is authorized under sections 603(b), 603(d) and 614(b) of the Clean Air Act (CAA).

The mandatory reporting requirements included in this rule are intended to:

(1) Satisfy U.S. obligations under the international treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(2) Fulfill statutory obligations under section 603(b) of Title VI of the Clean Air Act (CAA) for reporting and monitoring;

(3) Provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in section 603(d) of the CAA.

Information will be collected through quarterly reporting by producers and importers and annual reporting by distributors and third party applicators of methyl bromide. In addition, distributors and third party applicators would be required to provide quarterly updates on the availability of critical use exempted methyl bromide.

Collection activity	Number of respondents	Total number of responses	Hours per response	Total hours
Rule Familiarization	54	54	4	216
Report Inventory Data (one time)	54	54	2.5	135
Data Compilation (quarterly basis)	4	16	4	64
Data Compilation (annual basis)	50	50	8	400
Data Reporting (quarterly basis)	4	16	.5	8
Data Reporting (annual basis)	50	50	.5	25
Reporting on Allowance Trading Activities	4	16	.5	8
Self Certification Activities by Producers, Importers, and Distributors	54	100	.25	25
Self Certification Activities by End Users	2,000	2,500	.25	625
Total Burden Hours	.....	.....	18	1,505

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; process and maintain information; disclose and provide 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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Electronic Docket ID number OAR–2003–0230. Submit any comments related to the rule ICR for this proposed rule to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 attn: Desk Officer for EPA. Include the EPA ICR number (1432.23) in correspondence related to this ICR.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

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 businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less that 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.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural production	1112—Vegetable and Melon farming. 1113—Fruit and Nut Tree Farming. 1114—Greenhouse, Nursery, and Floriculture Production. 0831—Forest Nurseries and Gathering of Forest Products.	0171—Berry Crops 0172—Grapes 0173—Tree Nuts 0175—Deciduous Tree Fruits (except apple orchards and farms) 0179—Fruit and Tree Nuts, NEC 0181—Ornamental Floriculture and Nursery Products	$0.75 million.
Storage Uses	..... 115114—Postharvest Crop activities (except Cotton Ginning). 311211–Flour Milling. 311212–Rice Milling. ..... 493110—General Warehousing and Storage.	2041—Flour and Other Grain Mill Products 2044—Rice Milling 4221—Farm Product Warehousing and Storage	$6 million. $21.5 million.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
	493130—Farm Product Warehousing and Storage.	4225—General Warehousing and Storage	

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. Based on the data provided, EPA estimates that there are 3,218 entities that petitioned EPA for an exemption. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that between ¼ to ⅓ of the entities may be small businesses based on the definition given above. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of today's proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). 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 a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule will make methyl bromide available for approved critical uses after the phaseout date of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between $20 million to $30 million annually. 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), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under section 202, 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, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected State, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. Today's proposed rule seeks to obtain comment on provisions authorized under the international treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer, as well as authorizations set forth by Congress in section 604(d)(6) of the Clean Air Act. Viewed as a whole, all of today's amendments do not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under section 204.

E. Executive Order No. 13132: Federalism

Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The phrase ''policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order No. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct control costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct control costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that

preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

This 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 No. 13132. Today's proposed rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposed rule.

F. Executive Order No. 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order No. 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order No. 13175. Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order No. 13175 does not apply to this proposed rule.

G. Executive Order No. 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order No. 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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 Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order No. 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order No. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this rule is not likely to have any adverse energy effects.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Exports, Imports, Methyl bromide, Ozone, Production, Reporting and recordkeeping requirements, and Treaties.

Dated: August 11, 2004.

Michael O. Leavitt,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

Subpart A—Production and Consumption Controls

2. Section 82.3 is amended as follows:

a. By adding definitions in alphabetical order for the terms, ''Approved critical use,'' ''Approved critical user,'' ''Consortium,'' ''Critical stock allowance,'' ''Critical stock allowance holder,'' ''Critical use,'' ''Critical use allowance,'' ''Critical use allowance holder,'' ''Critical use methyl bromide,'' ''End user,'' ''Limiting critical condition,'' ''Location of use,'' ''Sell to approved critical users,'' ''Third party applicator,'' ''Unexpended critical stock allowance,'' and ''Unexpended critical use allowance;''

b. By revising definition of ''Confer.''

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

* * * * *

Approved critical use(s) means those uses of methyl bromide listed in Appendix L to this subpart that have a limiting critical condition.

* * * * *

Approved critical user(s) means a person who:

(1) For the applicable control period, applied to EPA for a critical use exemption or is a member of a consortium that applied for a critical use exemption for a use and location of use that was included in the U.S. nomination, authorized by a Decision of the Parties to the Montreal Protocol, and then finally determined by EPA in a notice-and-comment rulemaking to be a critical use in that location; and

(2) Has an area in the applicable location of use that requires methyl bromide fumigation because the area is subject to a limiting critical condition.

* * * * *

Confer means to shift the essential-use allowances obtained under § 82.8 from the holder of the unexpended essential-use allowances to a person for the production of a specified controlled substance, or to shift the HCFC–141b exemption allowances granted under § 82.16(h) from the holder of the unexpended HCFC–141b exemption allowances to a person for the production or import of the controlled substance.

* * * * *

Consortium means an organization representing a group of methyl bromide

users that has collectively submitted an application for a critical use exemption on behalf of all members of the group. The members of a consortium shall be determined on the basis of the rules established by the organization. Members may either be required to formally join the consortium (*i.e.*, by submitting an application or paying dues) or may automatically become members upon meeting particular criteria (*i.e.* a grower of a specific crop in a particular region).

* * * * *

Critical stock allowance (CSA) means the privilege granted by this subpart to sell one (1) kilogram of methyl bromide to an approved critical user during the specified control period to the extent permitted by federal and state pesticide statutes and regulations other than the Clean Air Act and regulations in this part. A person's critical stock allowances are the total of the allowances obtained under § 82.8(c) as may be modified under § 82.12 (transfer of allowances).

Critical stock allowance (CSA) holder means an entity to which EPA allocates a quantity of critical stock allowances as reflected under § 82.8(c).

Critical use means a circumstance in which the following two conditions are satisfied:

(1) There are no technically and economically feasible alternatives or substitutes for methyl bromide available to end users that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances involved, and

(2) The lack of availability of methyl bromide for a particular use would result in significant market disruption in the United States.

Critical use allowance (CUA) means the privilege granted by this subpart to produce or import on (1) kilogram of methyl bromide for an approved critical user during the specified control period. A person's critical use allowances are the total of the allowances obtained under § 82.8(c) as may be modified under § 82.12 (transfer of allowances).

Critical use allowance (CUA) holder means an entity to which EPA allocates a quantity of critical use allowances as reflected in § 82.8(c).

Critical use methyl bromide means the class I, Group VI controlled substance produced and imported through expending a critical use allowance.

* * * * *

End user means a person that treats or fumigates commodities, crops, structures or land in his possession with methyl bromide or contracts with a third party applicator for such treatment or fumigation.

* * * * *

Limiting critical condition means the regulatory, technical, and economic circumstances listed in Appendix L to this subpart that establish conditions of critical use for methyl bromide in a fumigation area. Such conditions may include, but are not limited, to:

(1) The absence of technically and economically feasible alternatives to methyl bromide for a specific use;

(2) Regulatory restrictions that prohibit the use of available alternatives in a specific fumigation area;

(3) Terrain, soil, or climatological conditions that render use of available alternatives technically or economically infeasible in a specific fumigation area.

* * * * *

Location of use means the geographic area (such as a state, region, or the entire United States) covered by an application for a critical use exemption in which the limiting critical condition may occur.

* * * * *

Sell to approved critical users means to sell quantities of methyl bromide to an end user or to contract with an end user to provide treatment or fumigation services on commodities, structures, crops, or land in the possession of the end user.

* * * * *

Third party applicator means an applicator of critical use methyl bromide who fumigates or treats commodities, structures, crops, or land in the possession of an end user.

* * * * *

Unexpended critical stock allowances (CSA) means critical stock allowances against which methyl bromide has not yet been sold or distributed to approved critical uses. At any time in any control period a person's unexpended critical stock allowances are the total of the level of critical stock allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of class I, Group VI controlled substances that the person has sold or distributed to approved critical users in that control period until that time.

* * * * *

Unexpended critical use allowances (CUA) means critical use allowances against which methyl bromide has not yet been produced or imported. At any time in any control period a person's unexpended critical use allowances are the total of the level of critical use allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of class I, Group VI controlled substances that the person has produced or has imported solely for approved critical uses in that control period until that time.

* * * * *

3. Section 82.4 is amended by revising paragraphs (b), (d) and (n), and by adding paragraph (p) as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(b) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substance, and effective August 18, 2003, for any class I, Group VIII controlled substance, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of conferred unexpended essential use allowances or exemptions under this subpart, or the amount of unexpended critical use allowances allocated under this subpart, or the amount of unexpended Article 5 allowances as allocated under § 82.9, for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

* * * * *

(d) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substance, and effective August 18, 2003, for any class I, Group VIII controlled substance, no person may import (except for transhipments or heels), at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended essential use allowances or exemptions, or unexpended critical use allowances, allocated in this subpart for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess importation (other than transhipments or heels) constitutes a separate violation of this subpart. It is a violation of this subpart to obtain unused class I controlled substances under the general laboratory exemption in excess of actual need and to recycle that material for sale into other markets.

* * * * *

(n) No person may use class I controlled substances produced or

imported under the essential use exemption for any purpose other than those set forth in this paragraph. Effective January 1, 1996, essential-use allowances are apportioned to a person under § 82.8(a) and (b) for the exempted production or importation of specified class I controlled substances solely for the purposes listed in paragraphs (n)(1)(i) through (iii) of this section.

(1) Essential-uses for the production or importation of controlled substances as agreed to by the Parties to the Protocol and subject to the periodic revision of the Parties are:

(i) Metered dose inhalers (MDIs) for the treatment of asthma and chronic obstructive pulmonary disease that were approved by the Food and Drug Administration before December 31, 2000.

(ii) Space Shuttle—solvents.

(iii) Essential laboratory and analytical uses (defined in Appendix G of this subpart).

(2) Any person acquiring unused class I controlled substances produced or imported under the authority of essential-use allowances or the essential-use exemption granted in § 82.8 to this subpart for use in anything other than an essential-use (*i.e.*, for uses other than those specifically listed in paragraph (n)(1) of this section) is in violation of this subpart. Each kilogram of unused class I controlled substance produced or imported under the authority of essential-use allowances or the essential-use exemption and used for a non-essential uses is a separate violation of this subpart. Any person selling unused class I controlled substances produced or imported under authority of essential-use allowances or the essential-use exemption for uses other than an essential-use is in violation of this subpart. Each kilogram of unused class I controlled substances produced or imported under authority of essential-use allowances or the essential-use exemption and sold for a use other than an essential-use is a separate violation of this subpart. It is a violation of this subpart to obtain unused class I controlled substances under the exemption for laboratory and analytical uses in excess of actual need and to recycle that material for sale into other markets.

* * * * *

(p) *Critical use exemption.* With respect to class I, Group VI substances (methyl bromide):

(1) No person shall sell critical use methyl bromide to an end user who is not an approved critical user. Every kilogram of critical use methyl bromide sold to an end user that is not an approved critical use constitutes a separate violation of this subpart.

(2) No person who acquires critical use methyl bromide may use such quantities for a use other than the specified critical use listed in Column A of Appendix L to this subpart. No person who acquires critical use methyl bromide produced under an allowance for a specific use sector listed in Appendix L to this subpart, if applicable, may use such quantities in a different use sector. No person who acquires critical use methyl bromide may use such material unless he meets a limiting critical condition listed in Appendix L to this subpart. No approved critical user shall take possession of quantities of critical use methyl bromide or acquire fumigation services using quantities of critical use methyl bromide without first certifying that they are approved critical users in accordance with the requirements in § 82.13. Every 200 kilograms of methyl bromide certified by an end user to be acquired for an approved critical use that is used for a use other than the specified critical use listed in Column A of Appendix L to this subpart constitutes a separate violation of this subpart .

(3) No person shall sell critical use methyl bromide to an approved critical user without first obtaining a signed certification form from the approved critical user. Every kilogram of critical use methyl bromide sold to an approved critical user without first obtaining certification constitutes a separate violation of this subpart.

(4) No person shall sell methyl bromide produced or imported before the phaseout date of January 1, 2005, to an approved critical user for a critical use and location of use listed in Appendix L to this subpart unless the person holds a critical stock allowance (CSA). Every kilogram of methyl bromide sold to an approved critical user for critical use in excess of the number of critical stock allowances held by the seller constitutes a separate violation of this subpart.

(5) No person shall sell methyl bromide produced or imported before the phaseout date of January 1, 2005, for a critical use listed in Column A to an end user listed in Column B of Appendix L to this subpart who is not an approved critical user because the end user does not have an area subject to the limiting critical condition in Column C of Appendix L.

* * * * *

4. Section 82.8 is added to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

(a) Effective January 1, 1996, persons in the following list are allocated essential-use allowances or exemptions for quantities of a specific class I controlled substance for a specific essential-use (the Administrator reserves the right to revise the allocations based on future decisions of the Parties).

TABLE I.—ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2004

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

(b) A global exemption for class I controlled substances for essential laboratory and analytical uses shall be in effect through December 31, 2005 subject to the restrictions in Appendix G of this subpart, and subject to the record-keeping and reporting requirements at § 82.13(u) through (x). There is no amount specified for this exemption.

(c) Effective January 1, 2005, critical use allowances are apportioned as set forth in paragraph (c)(1) of this section for the exempted production and import of class I, Group VI controlled substances specifically for those approved critical uses listed in Appendix L to this subpart for the applicable control period. Every kilogram of production and import in excess of the total number and type of unexpended critical use allowances held for a particular type of use constitutes a separate violation of this subpart. Effective January 1, 2005, critical stock allowances of a specific number are apportioned as set forth in paragraph (c)(2) of this section, for those uses listed in Appendix L to this subpart for the applicable control period, for the sale to approved critical users of class I, Group VI controlled substances held in inventory that were produced or imported before the January 1, 2005 phaseout date. Every kilogram of sale to approved critical users in excess of the total number of unexpended critical stock allowances held constitutes a separate violation of this subpart.

(1) *Allocated critical use allowances for annual control period.* [Reserved]

(2) *Allocated critical stock allowances for annual control period.* [Reserved]

5. Section 82.12 is amended by revising paragraph (a)(1) introductory text, (a)(1)(i)(H), (a)(1)(ii) introductory text, and (a)(1)(iii), and by adding paragraph (e) to read as follows:

§ 82.12 Transfers of allowances for class I controlled substances.

(a) *Inter-company transfers.* (1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2005, for Group VI, any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's Article 5 allowances. After January 1, 2002, any essential-use allowance holder (including those persons that hold essential-use allowances issued by a Party other than the United States) (''transferor'') may transfer essential-use allowances for CFCs to a metered dose inhaler company solely for the manufacture of essential MDIs. After January 1, 2005, any critical use allowance holder (''transferor'') may transfer critical use allowances to any other person (''transferee''). After January 1, 2005, any critical stock allowance holder (''transferor'') may transfer critical stock allowances to any critical stock allowance holder (''transferee'').

(i) * * *

(H) The one percent offset applied to the unweighted amount traded will be deducted from the transferor's production or consumption allowance balance (except for trades from transformers and destroyers to producers or importers for the purpose of allowance reimbursement). In the case of transferring essential use allowances, the amount of one tenth of one percent of the amount traded will be deducted from the transferor's allowance balance. In the case of transferring critical use allowances, the amount of one tenth of one percent of the amount traded will be deducted from the transferor's critical use allowance balance.

* * * * *

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production, allowable imports and exports of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended allowances sufficient to cover the transfer claim (*i.e.*, the amount to be transferred plus, in the case of transferors of essential use allowances and critical use allowances, one tenth of one percent of the transferred amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

* * * * *

(iii) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(1)(ii) of this section the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended allowances by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount, and in the case of essential use allowances and critical use allowances, one tenth of one percent of that amount. However if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

* * * * *

(e) *Exchange of critical use allowances for critical stock allowances.* (1) Critical use allowance holders may petition the Administrator to exchange a quantity of their unexpended critical use allowances for an equivalent amount of critical stock allowances provided they hold this equivalent amount of class I, Group VI controlled substance that was produced or imported in a prior control period either with production allowances and consumption allowances or critical use allowances. A person allocated critical stock allowances may not petition to exchange unexpended critical stock allowances for critical use allowances.

(2) [Reserved]

6. Section 82.13 is amended as follows:

a. By revising paragraphs (a), (f)(3)(iv) and (g)(4)(vii).

b. By adding paragraphs (f)(2)(xx) through (f)(2)(xxi), (f)(3)(xvi), (g)(1)(xx) through (g)(1)(xxi), (g)(4)(xviii), and (bb) through (dd).

§ 82.13 Recordkeeping and reporting requirements for class I controlled susntances.

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1995. For class I, Group VIII controlled substances, the recordkeeping and reporting requirements set forth in this section take effect on August 18, 2003. For class I, Group VI critical use methyl bromide, the recordkeeping and reporting requirements set forth in this section take effect January 1, 2005.

(f) * * *

(2) * * *

(xx) For class I, Group VI controlled substances, dated records such as invoices and order forms, and a log of the quantity of controlled substances produced for critical use, by specified critical use if applicable as per Appendix L of this subpart, and the quantity sold for critical use, by specified critical use if applicable as per Appendix L of this subpart, and;

(xxi) Written certifications that quantities of class I, Group VI controlled substances produced for critical use were purchased by distributors, applicators, or end users to be used or sold only for critical use in accordance with the definitions and prohibitions in

this subpart. Certifications must be maintained by a producer for a minimum of three years.

(3) * * *

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, Article 5 allowances, critical use allowances by specified critical use if applicable, critical stock allowances, and amount of essential-use allowances and destruction and transformation credits conferred at the end of that quarter;

* * * * *

(xvi) For critical uses of class I, Group VI controlled substances, an annual list of the total amount of critical use methyl bromide by specified critical use, if applicable as per Appendix L of this subpart, that was produced, bought, and sold as well as the amounts of critical use methyl bromide held in inventory by the reporting entity or held in inventory by the reporting entity on behalf of another entity.

(g) * * *

(1) * * *

(xx) For class I, Group VI controlled substances, dated records such as invoices and order forms, of the quantity of controlled substances imported for critical use, by specified critical use if applicable per Appendix L of this subpart, and the quantity sold for critical use, by specified critical use if applicable as per Appendix L of this subpart, and;

(xxi) Written certifications that quantities of class I, Group VI controlled substances imported for critical use were purchased by distributors, applicators, or end users to be used or sold only for critical use in accordance with the definitions and prohibitions in this subpart. Certifications must be maintained by an importer for a minimum of three years.

(4) * * *

(vii) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter and the total sum of expended and unexpended critical use allowances by specified critical use, if applicable, as per Appendix L of this subpart;

* * * * *

(xviii) For critical uses of class I, Group VI controlled substances, an annual list of the total amount of critical use methyl bromide by specified critical use if applicable, as per Appendix L of this subpart, that was imported, bought, and sold as well as the amounts of critical use methyl bromide held in inventory by the reporting entity or held in inventory by the reporting entity on behalf of another entity.

* * * * *

(bb) Every distributor of methyl bromide (class I, Group VI controlled substances) who purchases or receives a quantity of critical use methyl bromide must comply with recordkeeping and reporting requirements specified in this paragraph.

(1) Recordkeeping—Every distributor of critical use methyl bromide must certify to the producer or importer or other entity from which they are acquiring quantities of critical use methyl bromide that such quantities received will be sold or used only for approved critical use(s) in accordance with the definitions and prohibitions in this subpart.

(i) Every distributor of a quantity of critical use methyl bromide must receive from an applicator, or any other entity to whom they sell critical use methyl bromide, a certification of the quantity of critical use methyl bromide ordered, prior to delivery of the quantity, stating that the quantity will be sold or used only for approved critical uses in accordance with definitions and prohibitions in this subpart.

(ii) Every distributor of methyl bromide who receives a certification from an applicator or any other entity to which they sell critical use methyl bromide must maintain the certifications as records for 3 years.

(iii) Every distributor of a quantity of critical use methyl bromide must maintain invoice and order records related to the sale of such material for 3 years.

(2) Reporting—Every distributor of critical use methyl bromide must report to the Administrator annually, the following items:

(i) For critical uses of class I, Group VI controlled substances, an annual list of the amount of critical use methyl bromide bought, organized by specified critical use if applicable as per Appendix L of this subpart, and;

(ii) For critical uses of class I, Group VI controlled substances, an annual list of the amount of critical use methyl bromide sold organized by specified critical use and;

(iii) For critical uses of class I, Group VI controlled substances, an annual list of the amount of critical use methyl bromide held by the reporting entity or held by the reporting entity on behalf of another entity, organized by specified critical use if applicable as per Appendix L of this subpart.

(cc) Every third party applicator of methyl bromide (class I, Group VI controlled substances) that purchases or receives critical use methyl bromide must comply with recordkeeping and reporting requirements specified in this paragraph.

(1) Recordkeeping—Every third party applicator of methyl bromide must certify to the producer or importer or other entity from whom they are acquiring quantities of critical use methyl bromide that such quantities received will be sold or used only for approved critical use in accordance with the definitions and prohibitions in this subpart.

(i) Every third party applicator of a quantity of critical use methyl bromide must receive from an end user or any other entity, to whom they sell critical use methyl bromide or for whom they fumigate an area, a certification that the quantity of class I, Group VI controlled substances ordered, prior to delivery of the quantity or prior to providing fumigation services, will only be sold or used for critical uses in accordance with definitions and prohibitions in this subpart.

(ii) Every third party applicator of methyl bromide who receives a certification from an entity to which they sell critical use methyl bromide must maintain the certifications as records for 3 years.

(iii) Every third party applicator of a quantity of critical use methyl bromide must maintain invoice and order records related to the sale of such material for three years.

(2) Reporting—Every third party applicator of critical use methyl bromide must report to the Administrator annually, the following items:

(i) For critical uses of class I, Group VI controlled substances, an annual list of the amount of critical use methyl bromide bought, and from whom, organized by specified end use if applicable as per Appendix L of this subpart and;

(ii) For critical uses of class I, Group VI controlled substances, an annual list of the amount of critical use methyl bromide sold organized by specified end use and;

(iii) For critical uses of class I, Group VI controlled substances, an annual list of the amount of critical use methyl bromide held for the reporting entity or held by the reporting entity on behalf of another entity, organized by specified end use if applicable as per Appendix L of this subpart.

(dd) Every approved critical user purchasing an amount of critical use methyl bromide or purchasing fumigation services with critical use methyl bromide must, for each request,

certify knowledge of the requirements associated with the exemption for critical use in this subpart and provide such information that identifies the use as a critical use and the user as an approved critical user. The certification will state, in part: ''I certify, under penalty of law, knowledge of the requirements associated with the exempted critical use published in 40 CFR part 82, including the requirement that this letter cite basic information identifying the end use as an approved critical use and the end user as an approved critical user.''

7. Add Appendix L to subpart A to read as follows:

Appendix L to Subpart A of Part 82—Approved Critical Uses, and Limiting Critical Conditions for Those Uses for the 2005 Control Period

Column A—Approved critical use	Column B—End user and location of use	Column C—Limiting critical conditions
	Pre-Plant Uses	
Cucurbits	(a) Michigan growers	with moderate to severe fungal pathogen infestation.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee, and Virginia growers.	with moderate to severe yellow or purple nutsedge infestation.
Eggplant	(a) Georgia growers	with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge infestation, moderate to severe nematode infestation, or moderate severe fungal pathogen infestation.
	(b) Florida growers	with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematode infestation, or moderate to severe fungal pathogen infestation, or karst topography.
Forest Seedlings	(a) Members of the Southern Forest Nursery Management Cooperative limited to growing locations in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	with one or more of the following limiting critical conditions: moderate to severe fungal pathogen infestation, moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Arkansas, Alabama, Georgia, South Carolina and Texas.	with one or more of the following limiting critical conditions: moderate to severe fungal pathogen infestation, moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(c) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, South Carolina, Oregon, and Washington.	with one or more of the following limiting critical conditions: moderate to severe fungal pathogen infestation, moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(d) Public (government owned) seedling nurseries in the states of California, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, Utah, Washington, West Virginia and Wisconsin.	with one or more of the following limiting critical conditions: moderate to severe fungal pathogen infestation, moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(e) Members of the Nursery Technology Cooperative limited to growing locations in Oregon and Washington.	with one or more of the following limiting critical conditions: moderate to severe fungal pathogen infestation, moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(f) Michigan seedling nurseries	with one or more of the following limiting critical conditions: moderate to severe fungal pathogen infestation, moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
Ginger	Hawaii growers	with the limiting critical condition of moderate to severe nematode infestation, or moderate to severe bacterial wilt infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's raspberries and their contract growers in California and Washington).	with one or more of the following limiting critical conditions: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers.	with one or more of the following limiting critical conditions: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.
	(c) Members of the California Association of Nurserymen-Citrus and Avocado Growers.	with one or more of the following limiting critical conditions: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.

Column A—Approved critical use	Column B—End user and location of use	Column C—Limiting critical conditions
Orchard Replant	(a) California stone fruit growers	with one or more of the following limiting critical conditions: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(b) California table and raisin grape growers.	with one or more of the following limiting critical conditions: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California walnut growers	with one or more of the following limiting critical conditions: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(d) California almond growers	with one or more of the following limiting critical conditions: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Ornamentals	(a) Yoder Brothers Inc. in Florida	for use in chrysanthemum production.
	(b) California rose nurseries	prohibited from using 1,3–dichloropropene products because local township limits for this alternative have been reached.
Peppers	(a) California growers	with the limiting critical conditions of moderate to severe fungal pathogens, or moderate to sever disease infestation, or moderate to sever nematode infestation, or moderate to severe yellow or purple nutsedge infestation, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee and Virginia growers..	with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge infestation, or the presence of an occupied structure within 76 meters of a grower's field the size of 100 acres or less.
	(c) Florida growers	with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge infestation, or karst topography.
Strawberry Nurseries	(a) California growers	with one or more of the following limiting critical conditions: moderate to severe black root rot or crown rot, moderate to severe nematode infestation, or moderate to severe yellow or purple nutsedge infestation.
	(b) North Carolina and Tennessee growers	with the presence of an occupied structure within 76 meters of a grower's field the size of 100 acres or less.
Strawberry Fruit	(a) California growers	with one or more of the following limiting critical conditions: moderate to severe black root rot or crown rot, moderate severe nematode infestation, moderate to severe yellow or purple nutsedge infestation, a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(b) Florida growers	with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge, or karst topography.
	(c) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee, Virginia, Ohio and New Jersey growers.	with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge, or the presence of an occupied structure within 76 meters of a grower's field the size of 100 acres or less.
Sweet Potatoes	California growers	with the contingent limiting critical condition of a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Tomatoes	(a) Michigan growers	with moderate to severe disease, or fungal pathogens.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee and Virginia growers.	with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge infestation, or the presence of an occupied structure within 76 meters of a grower's field the size of 100 acres or less.
	(c) Florida growers	with one or more of the following limiting critical conditions: moderate to severe yellow or purple nutsedge infestation, or karst topography.
Turfgrass	(a) U.S. turfgrass sod nursery producers	for the production of industry certified pure sod.
	(b) U.S. golf courses	for establishing sod in the construction of new golf courses or the renovation of putting greens, tees, and fairways.

Column A—Approved critical use	Column B—End user and location of use	Column C—Limiting critical conditions
	Post-Harvest Uses	
Food Processing	(a) Rice millers in Arkansas, California, Louisiana, Florida, Missouri, and Mississippi.	with one or more of the following limiting critical conditions: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity.
	(b) Pet food manufacturing facilities in the U.S.	with one or more of the following limiting critical conditions: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity.
	(c) Kraft Foods in the U.S	with one or more of the following limiting critical conditions: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity.
	(d) Members of the North American Millers' Association in the U.S.	with one or more of the following limiting critical conditions: older structures that can not be properly sealed to use an alternative methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity.
Commodity Storage	(a) Gwaltney of Smithfield in the U.S	for smokehouse ham curing facilities owned by the company.
	(b) California entities storing walnuts, beans, dried plums, and pistachios in California.	with one or more of the following limiting critical conditions: rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7802–2]

Protection of Stratospheric Ozone: Request for Information on Existing and Available Stocks of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Section 114 information request.

SUMMARY: With this action, EPA is requiring individuals or legal entities that produce, import, distribute, sell, apply, or buy methyl bromide to provide EPA with data on the amount of methyl bromide material they hold for sale and amounts they hold for transfer to another entity. EPA needs this information to promulgate a rule to allow the continued production, consumption, and use of methyl bromide for proposed critical uses exempted from the January 1, 2005 phaseout of methyl bromide. This exemption for critical uses is allowed under section 604 of the Clean Air Act (CAA) and the Montreal Protocol on Substances that Deplete the Ozone Layer (''Montreal Protocol'').

Specifically, EPA requires the information specified in today's notice to ensure the Agency has the most recent and complete information on existing stocks of methyl bromide to use as a basis for identifying the amount of stocks available for critical uses. In addition, EPA will use this data to create baselines for the allocation of critical stock allowances to identified inventory holders that wish to sell methyl bromide to the critical use market and to determine how much new production and consumption (defined as production plus imports minus exports) of methyl bromide to authorize for critical uses in 2005. Further details on EPA's proposed action are described in the notice of proposed rulemaking entitled ''Protection of Stratospheric Ozone: Process for Exempting Critical Uses from the Phaseout of Methyl Bromide'' published elsewhere in today's **Federal Register**.

EPA is authorized to obtain this information under section 114 of the Clean Air Act.

FOR FURTHER INFORMATION CONTACT: For further information about this information request, contact Hodayah Finman by telephone at (202) 343–9246, or by e-mail at *finman.hodayah@epa.gov,* or by mail at Hodayah Finman, U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to 1310 L Street, NW., Washington, DC 20005 att: Hodayah Finman at 343–9410. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION:

I. Background

Methyl bromide is an odorless, colorless, toxic gas, which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a wide variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule on the phaseout schedule for methyl bromide published in the **Federal Register** on March 18, 1993 (58 FR 15014), and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Information on methyl bromide can also be found at the following sites of the World Wide Web: *http://www.epa.gov/ozone/mbr and http://teap.org* or by contacting the Stratospheric Ozone Hotline at 1–800–296–1996.

Because it is a pesticide, methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority and by states under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Because of this status, a restricted use pesticide is subject to certain federal and state requirements governing its sale, distribution, and use. Nothing in this notice implementing the Clear Air Act is intended to derogate from provisions in any other federal, state, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide.

Under the Clean Air Act, methyl bromide consumption and production will be completely phased out on January 1, 2005, apart from allowable exemptions, namely the critical use exemption and the quarantine and pre-shipment exemption. Elsewhere in today's **Federal Register**, EPA is proposing a rule containing the framework for how the critical use exemption will operate as well as an allocation of allowances for the amounts of methyl bromide that may be produced, imported, and sold for proposed critical uses in 2005.

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone depleting substances can be found at 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing of the Montreal Protocol. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 that included Title VI on Stratospheric Ozone Protection to ensure that the United States could satisfy its obligations under the Protocol. EPA has made several amendments to the regulations since that time.

Methyl bromide was added to the Protocol as an ozone depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Protocol established a freeze in the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting in Copenhagen. The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing the freeze. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 69235), listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in § 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001 (58 FR 65018). This phaseout date was consistent with requirements under section 602(d) of the CAA for newly listed class I ozone-depleting substances that ''no extension under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.'' Therefore, the 1993 regulation established a United States phaseout for methyl bromide in 2001.

At their 1995 meeting, the Parties made adjustments to the methyl bromide control measures and agreed to

reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At this time, the U.S. continued to have a 2001 phaseout date in accordance with the Clean Air Act language. At their 1997 meeting, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout for industrialized countries. In October 1998, the U.S. Congress amended subchapter VI of the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to bring the U.S. phaseout of methyl bromide in line with the global requirements specified under the Protocol and to provide for the exemptions under the Protocol. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277, October 21, 1998) and were codified in section 604 of the CAA. On November 28, 2000, EPA issued regulations to amend the phaseout schedule for methyl bromide and extend the complete phaseout of production and consumption to 2005 (65 FR 70795).

Elsewhere in today's **Federal Register**, EPA is proposing to further amend 40 CFR part 82 to implement an exemption to the 2005 phaseout of methyl bromide that allows continued production and consumption of methyl bromide for critical uses. Section 604(d)(6) of the Clean Air Act provides that ''[t]o the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or instrumentalities of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses.'' 42 U.S.C. 7671c(d)(6). Article 2H(5) of the Montreal Protocol provides that the 2005 methyl bromide phaseout shall not apply ''to the extent the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.''

Both sections 604(d)(6) and 614(b) of the CAA address the relationship between the Montreal Protocol and actions taken under subchapter VI of CAA. Section 604(d)(6) addresses critical uses specifically, while section 614(b) is more general in scope. Section 604(d)(6) states that ''to the extent consistent with the Montreal Protocol,'' the Administrator may exempt methyl bromide for critical uses. Section 614(b) states that Subchapter VI ''shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In case of a conflict between any provision of this subchapter and any provision of the Montreal Protocol, the more stringent provision shall govern.''

EPA must take into account not only the text of Article 2H but also the related Decisions of the Protocol Parties that interpret that text. Under customary international law, as codified in the 1969 Vienna Convention on the Law of Treaties (8 International Legal Materials 679 (1969)) both the treaty text and the practice of the parties in interpreting that text form the basis for its interpretation. Although the United States is not a party to the 1969 Convention, the United States has regarded it since 1971 as ''the authoritative guide to current treaty law and practice.'' *See* Secretary of State William D. Rodgers to President Richard Nixon, October 18, 1971, 92d Cong., 1st Sess., Exec. L (November 22, 1971). Specifically, Article 31(1) of the Vienna Convention provides that ''[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.'' Article 31(3) goes on to provide that ''[t]here shall be taken into account, together with the context: (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.'' In the current circumstances Decisions of the Parties can be construed as subsequent consensus agreements among the Parties to the Montreal Protocol, including the United States, regarding the interpretation and application of the Protocol.

In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. At their Ninth Meeting in 1997, the Parties issued Decision IX/6 which established criteria applicable to the critical use exemption. In paragraph 1 of Decision IX/6, the Parties agreed as follows:

(a) That a use of methyl bromide should qualify as ''critical'' only if the nominating Party determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination;

(b) That production and consumption, if any, of methyl bromide for critical uses should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into account the circumstances of the nomination * * * Non-Article V [Developed country] parties must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes * * *

The Parties also agreed in Decision IX/6 that the technical panel that reviews nominations and makes recommendations to the Parties regarding approval of critical use exemptions, would base its review and recommendations on the criteria in paragraphs (a)(ii) and (b). The criterion in paragraph (a)(i) was not subject to review by this technical panel.

The procedural requirements for the critical use exemption are also delineated in Decision IX/6 of the Parties to the Protocol. As applied in the United States, users of methyl bromide who believe they may meet the criteria to qualify for a critical use exemption may make an application to EPA for inclusion in the U.S. nomination of critical uses. Starting in 2002, EPA began notifying applicants as to the availability of the application, and the deadline to apply, with a notice in the **Federal Register** (68 FR 24737) and an announcement on the methyl bromide Web site at *http://www.epa.gov/ozone/mbr.* Applicants for the critical use exemption must provide information demonstrating to the U.S. government that the specific use of methyl bromide is critical because (1) the lack of availability of methyl bromide for that use would result in significant market disruption, and (2) the applicants have no technically and economically feasible alternatives or substitutes to methyl bromide available to them that are acceptable from the standpoint of environment and health and are suitable to the crops of circumstances of use.

Applicants for the exemption must also submit information on their use of methyl bromide, on research into the use of alternatives to methyl bromide, on efforts to minimize use of methyl bromide and to reduce emissions and on the specific technical and economic results of testing alternatives to methyl bromide. Applicants may apply as individuals or as part of a group of users (a ''consortium'') who face the same limiting critical conditions (*i.e.* specific conditions which establish a critical need for methyl bromide).

The U.S. government reviews applications and creates a package for submission to the Ozone Secretariat of the Protocol for uses nominated as having a critical need for methyl bromide beyond the phaseout. Each Party must justify such a request by determining that (1) the specific use is critical because the lack of availability of methyl bromide for that use would result in significant market disruption; and (2) there are no technically and economically feasible alternatives or substitutes available that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination. Based on the recommendations of a technical panel of the Ozone Secretariat, the Parties to the Protocol, at their annual meetings, take decisions to authorize critical use exemptions.

At the First Extraordinary Meeting of the Parties in March of 2004, the Parties issued several decisions that address the agreed critical uses, the allowable levels of new production and consumption for critical uses, the conditions for granting critical use exemptions, and reporting obligations. Decision Ex. I/3 covers the agreed critical uses and allowable levels of new production and consumption for the year 2005. This Decision includes the following terms:

1. For the agreed critical uses set forth in annex II A to the report of the First Extraordinary Meeting of the Parties to the Montreal Protocol for each Party, to permit, subject to the conditions set forth in decision Ex. I/4, the levels of production and consumption set forth in annex II B to the present report which are necessary to satisfy critical uses, with the understanding that additional levels and categories of uses may be approved by the Sixteenth Meeting of the Parties in accordance with decision IX/6;

2. That a Party with a critical-use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such difference between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available;

3. That a Party using stocks under paragraph 2 above shall prohibit the use of stocks in the categories set forth in annex II A to the report of the First Extraordinary Meeting of the Parties to the Montreal Protocol when amounts from stocks combined with allowable production and consumption for critical uses exceed the total level for that Party set forth in annex II A to the present report;

4. That Parties should endeavor to allocate the quantities of methyl bromide recommended by the Technology and Economic Assessment Panel as listed in annex II A to the report of the First Extraordinary Meeting of the Parties;

5. That each Party which has an agreed critical use should ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing the use of methyl bromide and that such procedures take into account available stocks. Each Party is requested to report on the implementation of the present paragraph to the Ozone Secretariat;

The agreed critical uses and allowable levels of production and consumption are set forth in annexes to the Parties' report. Decision Ex I/4 addresses the conditions for granting and reporting critical-use exemption for methyl bromide.

Decisions IX/6, Ex. I/3, and Ex. I/4 are subsequent consensus agreements of the Parties that address the interpretation and application of the critical use provision in Article 2H(5) of the Protocol. For example, Decision Ex. I/3 reflects a decision called for by the text of Article 2H(5) where the parties are directed to ''decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.'' EPA intends to follow the terms of Decisions IX/6, Ex. I/3, and Ex. I/4. This would ensure consistency with the Montreal Protocol and satisfy the requirements of section 604(d)(6) and Section 614(b) of the CAA.

Decision Ex. I/3 recognizes that article 2H(5) of the Protocol contemplates that the Parties will make two separate determinations when establishing the critical use exemption. First, the Parties agree on the total amount and categories of uses that are deemed critical under the criteria established in Decision IX/6. Second, the Parties determine the maximum level of new production and consumption that should be permitted because it is necessary to satisfy those critical uses. Under paragraph 1 of Decision Ex. I/3, the first of these determinations (the ''agreed critical uses'') is reflected in annex II A to the report of the First Extraordinary Meeting of the Parties. For the United States, the Parties agreed to 16 critical uses for methyl bromide and authorized use of 8,942 metric tons of methyl bromide for these critical uses. The second of these determinations is set forth in annex II B which allows the United States 7,659 metric tons of production and consumption of methyl bromide to satisfy critical uses. Where the level of agreed critical uses exceeds the level of new production and consumption determined by the Parties to be necessary to satisfy those uses, a Party is to utilize available stocks of methyl bromide to fill the gap. Decision Ex. I/3, para. 2. Parties are to ensure that the total use of methyl bromide material supplied from existing stocks and new production and consumption does not exceed the overall level of use agreed to be critical. Decisions Ex. I/3, para. 3. Thus, Decision Ex. I/3 establishes two caps with respect to methyl bromide for 2005—one on the level of new production and consumption for critical uses and one on the total usage of methyl bromide in the agreed critical use categories.

Under Decision Ex I/3, the United States is allowed to use a total of 8,942 metric tons of methyl bromide in 2005 to satisfy critical uses. In accordance with Decision Ex I/3, the quantity of new production and consumption in combination with the amount of stocks determined to be available for the specified critical uses cannot exceed for 2005 the amount of 8,942 metric tons. Because of the cap on the amount of methyl bromide available for the specified critical uses, EPA will not authorize new production and consumption that, when combined with use of available stocks, would exceed the agreed critical use level of 8,942 metric tons. The methyl bromide to satisfy those uses may be derived from available stocks of material or new production and consumption. The upper limit on the amount of new production and consumption for the specified critical uses is 7,659 metric tons. However, this level of new production and consumption was authorized by the Parties subject to compliance with the conditions set forth in Decisions Ex. I/3 and Ex. I/4. One of these conditions, in paragraph 5 of Decision Ex. I/3, provides that ''each Party which has an agreed critical use should ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing the use of methyl bromide

and that such procedures take into account available stocks.'' Thus, in deciding the level of new production and consumption allowed in the United States, EPA is proposing to consider the amount of methyl bromide from stocks recognized by EPA to be ''available'' for critical uses.

In addition, to prevent the total use levels of methyl bromide from exceeding the critical use cap, Paragraph 3 of Decision Ex I/3 requires that Parties prohibit the use of stocks of methyl bromide under certain circumstances. This provision states ''that a Party using stocks under paragraph 2 above shall prohibit the use of stocks in the categories set forth in annex II A to the report of the First Extraordinary Meeting of the Parties to the Montreal Protocol when amounts from stocks combined with allowable production and consumption exceed the total level for that Party set forth in annex II A to the present report.'' This restriction applies in countries where methyl bromide material necessary to meet the agreed critical uses is derived from a combination of available stocks and new production or imports. In this situation, a Party may not allow the total amount of material supplied from stocks and new production and consumption to exceed the level of use for categories determined by the Parties to be critical. This restriction is necessary to ensure that a Party's total level of use in critical use categories does not exceed the level which formed the basis for the Parties' decision to authorize new production and consumption at particular levels. This limitation was deemed to be a necessary condition applicable to Parties authorized under the critical use exemption to produce or import a dedicated supply of methyl bromide to meet critical needs after the 2005 phaseout of methyl bromide.

Thus, in accordance with Decision Ex. I/3, if EPA authorizes new production and consumption to supplement available stocks, EPA will restrict the use of existing stocks of methyl bromide in cases where use of stocks combined with the authorized level of new production and consumption could exceed the critical use cap. In light of the Parties' agreement in Decision Ex. I/3 that such a restriction is needed to implement Article 2H(5) of the Protocol, EPA is authorized under sections 604(b)(6) and 614(b) of the Clean Air Act to regulate the use of existing stocks of methyl bromide. EPA's power under section 604(b)(6) to exempt new production, importation, and consumption of methyl bromide for critical uses exists ''to the extent consistent with the Montreal Protocol.'' 42 U.S.C. 7671c(b)(6). Because the Parties have interpreted the Protocol to impose such a use restriction as a condition for the authorization of new production and consumption for critical uses, EPA will adhere to the same restriction in its domestic implementation of the critical use exemption. This adherence is consistent with section 614(b) of the Clean Air Act. 42 U.S.C. 7671m(b).

II. Basis for Information Request

In this document, EPA is seeking recent and complete information on existing stocks of methyl bromide. EPA is requesting the data described in today's action to (a) determine the amount of total existing and available stocks in the U.S., (b) identify all parties that hold stocks and are entitled to receive critical stock allowances and (c) to develop baselines for the allocation of critical stock allowances to pre-phaseout inventory holders.

Under EPA's proposed rule to implement the critical use exemption published elsewhere in today's **Federal Register**, to sell methyl bromide that was legally produced or imported before January 1, 2005 (pre-phaseout inventories), to the critical use market a seller must hold and expend a critical stock allowance. EPA is further proposing to distribute critical stock allowances to persons who respond to this action on a *pro rata* basis relative to the amounts of the total inventory held by each respondent.

III. Statutory Authority

The Agency requests this information under section 114 of the Clean Air Act, which authorizes EPA to obtain information, even confidential business information, needed to carry out the provisions of the Act.

IV. Information Requested

A. Affected Entities

EPA is requiring that individuals or legal entities that are holding stocks of methyl bromide for sale or for transfer, provide EPA with the data specified in section IV.C. of this notice. Sale refers to stocks of methyl bromide, or fumigation services with stocks of methyl bromide, that the holder may have chose to provide to another entity in exchange for monetary or other compensation. Transfer refers to stocks of methyl bromide that have already been sold but not yet delivered to the purchaser, or fumigation services with stocks of methyl bromide that have been contracted for but not yet applied/fumigated, and therefore are held in physical possession by one entity or individual on behalf of another. Individuals or entities that may hold stocks for sale or transfer include entities that produce, import, distribute, sell, apply or buy methyl bromide. If an individual or entity is not in physical possession of stocks for sale or stocks for transfer, no response to EPA is required.

To avoid double counting existing inventories, EPA is requesting data only from entities that are in physical possession of stocks that are for sale or for transfer. For example, end users of methyl bromide who contract with an applicator or other distributor for fumigation with methyl bromide as described in the following paragraph are not affected by this notice because they are not holding the physical stocks. In this example, the applicator or distributor would provide information to EPA on the amount of methyl bromide he is holding for transfer to the end user and the end user would not have any reporting obligation to EPA.

In addition to stocks held for sale, EPA is seeking data on the quantities of methyl bromide that are being held for transfer so that the Agency may have a complete understanding of how much methyl bromide is in the existing national inventory. Stocks held for transfer may be a significant part of national methyl bromide inventories because of the prevalence of forward contracting in this industry. End users typically contract for a specified number of fumigations and/or amount of methyl bromide months or more in advance of the actual fumigation. Therefore, there may be sizable quantities of methyl bromide in national inventories as of the date of today's notice that are part of the existing inventory. Failure by EPA to fully account for the total existing stock could result in an underestimate of available stocks and the issuance of too few critical stock allowances.

B. Methyl Bromide

For purposes of this request, methyl bromide means the active ingredient methyl bromide (CH_3Br) that is contained in a pesticide product (either end use or manufacturing use) or intended for use in a pesticide product. For purposes of calculating the amounts of methyl bromide, the respondent shall not include other inert or active ingredients that may be mixed with methyl bromide in a pesticide product.

C. Data Required

EPA is requiring that each affected entity (as defined in section IV.A.) provide the following data:

i. The total quantity of methyl bromide (in kilograms) that was in your

possession or held by you (regardless of whether held for your benefit or on behalf of another person) as of December 31, 2003;

ii. The total quantity of methyl bromide (in kilograms) that was in your possession or held by you (regardless of whether held for your benefit or on behalf of another person) as of the date of this notice;

iii. The total quantity of methyl bromide (in kilograms) identified in response to paragraphs i and ii. above that is designated as having been produced for use in accordance with the exemption for quarantine and preshipment applications (QPS),

iv. The total quantity of methyl bromide (in kilograms) identified in response to paragraph i. and ii. above that is designated as having been produced with expended Article 5 allowances explicitly for export to developing countries.

D. Confidential Business Information

Anyone submitting information must assert a claim of confidentiality for any data it wishes to have treated as confidential business information (CBI) under 40 CFR part 2, subpart B. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2, subpart B. Failure to assert a claim of confidentiality at the time of submission may result in disclosure of the information by the Agency without further notice. 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).

Under section 157(b) of the Clean Air Act, ICF Consulting is hereby designated as an Authorized Representative of the Administrator of the United States Environmental Protection Agency for the purpose of assisting EPA in the development and implementation of national regulations for protection of stratospheric ozone, including the development of critical stock allowance baselines and allocations.

The Authorized Representative, under EPA contract 68–W–02–028, may have access to any information received by the EPA to aid the Agency in analytical tasks associated with the critical use exemption to the phaseout of methyl bromide including, but not limited to, analyzing baselines, verifying data, and cross referencing information. Access to confidential business information is necessary so that ICF Consulting may carry out work required by the contract.

Authorized representatives of the Administrator are subject to the provisions of 42 U.S.C. 7414(c) respecting confidential business information as implemented by 40 CFR 2.301(h).

E. Submission of Data

The data required under this request must be submitted to EPA by September 23, 2004. All responsive information must be sent to the address listed under the **FOR FURTHER INFORMATION CONTACT** section of this action.

Your response must be signed by a responsible officer of your company who shall make the following certification: ''I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.''

V. Additional Information

Paperwork Reduction Act

The information collection requirements in this request have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has been assigned OMB control number 2060–0557.

The information collection under this notice and the accompanying proposed rule is authorized under sections 114, 603(b), 603(d), and 614 of the Clean Air Act (CAA).

EPA estimates that the total burden associated with the response to this notice is 135 hours. This estimate is based on EPA's understanding that there are approximately 54 potential respondents to today's action and the Agency's estimate that the average response will be 2.5 hours per entity.

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; process and maintain information; disclose and provide 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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for the proposed rule published elsewhere in today's **Federal Register**, which includes this ICR, under Electronic Docket ID number OAR–2003–0230. Submit any comments related to the rule ICR for this notice to EPA and OMB. See **ADDRESSES** Section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington D.C.20503 attn: Desk Officer for EPA. Include the EPA ICR number (2157.01) in correspondence related to this ICR.

As noted above, respondents may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

Dated: August 11, 2004.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 04–18932 Filed 8–24–04; 8:45 am]

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Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Mandatory exclusion of health care providers and representatives from participating in disability programs; comments due by 8-31-04; published 7-2-04 [FR 04-15077]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Air carrier certification and operations:
Portable oxygen concentrator devices use onboard aircraft; comments due by 8-30-04; published 8-13-04 [FR 04-18645]
Transport airplane fuel tank systems; special maintenance program requirements; compliance extension; aging airplane program update; comments due by 8-30-04; published 7-30-04 [FR 04-17188]

Airworthiness directives:
Airbus; comments due by 8-30-04; published 8-4-04 [FR 04-17762]
Airline Container Manufacturing Co., Inc.; cargo restraint strap assemblies; comments due by 8-30-04; published 8-4-04 [FR 04-17764]
BAE Systems (Operations) Ltd.; comments due by 8-30-04; published 7-30-04 [FR 04-17224]
Boeing; comments due by 8-30-04; published 7-15-04 [FR 04-16030]

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 ''P L U S'' (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*.

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H.R. 4842/P.L. 108–302

United States-Morocco Free Trade Agreement Implementation Act (Aug. 17, 2004; 118 Stat. 1103)

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