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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

**[Docket No. 98–054–3]**

**RIN 0579–AB02**

## Importation of Unmanufactured Wood Articles From Mexico

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations to add restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from Mexican States adjacent to the United States/Mexico border. This rule requires that these wood articles meet certain treatment and handling requirements to be eligible for importation into the United States. This action is necessary to prevent the introduction into the United States of plant pests, including forest pests, with unmanufactured wood articles from Mexico.

**DATES:** Effective September 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hesham Abuelnaga, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5334.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in ''Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles'' (7 CFR 319.40–1 through 319.40–11, referred to below as the regulations) are intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles.

The regulations have provided, in part, that unmanufactured wood articles may be imported into the United States from Canada and from Mexican States adjacent to the United States/Mexico border [1] under a general permit, while unmanufactured wood articles from Mexican States that are not adjacent to the United States/Mexico border are subject to more rigorous requirements. The less restrictive importation requirements for unmanufactured wood articles imported into the United States from Canada and from Mexican States adjacent to the United States/Mexico border were based on the premise that the forests in the United States share a common forested boundary with Canada and adjacent States in Mexico and, therefore, share, to a reasonable degree, the same forest pests. However, a Forest Service pest risk assessment published in February 1998 showed that a significant pest risk exists in the movement of raw wood material into the United States from the adjacent States of Mexico.[2] This conclusion was later confirmed by United States Department of Agriculture (USDA) inspectors during inspections at ports of entry along the United States/Mexico border.

In response to these findings, on June 11, 1999, we published in the **Federal Register** (64 FR 31512–31518, Docket No. 98–054–1) a proposal to amend the regulations by adding restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from the northern border States of Mexico. We proposed to amend the regulations to provide that pine and fir logs and lumber, as well as other unmanufactured wood articles, imported into the United States from Mexican States adjacent to the United States/Mexico border would be subject to the same requirements as Mexican States that are not adjacent to the United States/Mexico border.

Specifically, for unmanufactured wood articles from Mexico, we proposed to limit the scope of the general permit under § 319.40–3(a) to cover only the importation, from the northern border States, of unmanufactured mesquite wood for cooking, unmanufactured wood for firewood, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes. We proposed several miscellaneous changes, including requiring that the pressure treatment for railroad ties required by § 319.40–5(f) be conducted at a U.S. facility under compliance agreement with the Animal and Plant Health Inspection Service (APHIS); removing the provision in § 319.40–3(a) that the importer document required by that paragraph must state that the articles have never been moved outside Canada or the northern border States of Mexico; and specifying that an importer document is necessary only for commercial shipments of unmanufactured wood articles imported into the United States under a general permit.

We also proposed to amend § 319.40–5 to add methyl bromide fumigation as an additional treatment option for cross-ties and pine and fir lumber from all of Mexico. However, upon further consideration, we have determined that it is not necessary to provide for the use of methyl bromide fumigation for cross-ties and pine and fir lumber from all of Mexico. To date, Mexican States that are not adjacent to the United States/Mexico border have been able to export cross-ties and pine and fir lumber to the United States in accordance with the existing regulations. Therefore, these States do not appear to need the alternative treatment of methyl bromide fumigation. In contrast, kiln drying capacity is very limited in the Mexican States adjacent to the United States/Mexico border, and we expect that it will take some time for new kilns to be built in those States. Given the limited kiln drying capacity and the fact that all of the quarantine pests identified in the pest risk assessment can be mitigated by methyl bromide fumigation, we believe it is reasonable to add methyl bromide fumigation as an alternative treatment for cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border. Accordingly, paragraph (l) of § 319.40–

[1] The Mexican States adjacent to the United States/Mexico border are Baja California Norte, Chihuahua, Coahuila, Nuevo León, Sonora, and Tamaulipas.

[2] Copies of ''Pest Risk Assessment of the Importation Into the United States of Unprocessed *Pinus* and *Abies* Logs From Mexico,'' may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Internet at *http://www.fpl.fs.fed.us/documnts/fplgtr/fplgtr104.pdf.*

5 in this final rule adds methyl bromide fumigation as an alternative treatment for cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border. In addition, we have added a footnote to indicate that cross-ties from these States may also be imported if pressure treated with a preservative or heat treated. As additional kilns are built in the Mexican States adjacent to the United States/Mexico border, we expect that kiln drying will become the preferred method of treatment because it increases the commercial value of unmanufactured wood while satisfying phytosanitary treatment requirements.

We solicited comments concerning our proposal for 60 days ending on August 10, 1999. We received 21 comments by that date. They were from various timber industry representatives, environmental groups, State representatives, and other interested individuals. Although the commenters generally supported our efforts to close a potential pathway for the introduction of dangerous plant pests into the United States, some commenters expressed concern about specific provisions of the proposal. These are discussed by subject below.

*Lumber and Cross-Ties*

*Comment:* For cross-ties and pine and fir lumber, APHIS should require mandatory fumigation immediately prior to importation and heat or pressure treatment within 30 days following importation. The proposal's provision to limit treatment only to methyl bromide fumigation prior to importation does not adequately address the pest risk associated with the importation of these articles.

*Response:* We do not agree that both fumigation with methyl bromide and heat or pressure treatment should be required as a condition of entry for cross-ties and pine and fir lumber. Methyl bromide fumigation was proposed merely as an alternative treatment for cross-ties and pine and fir lumber from Mexico. We are confident that requiring that lumber and cross-ties be completely free of bark and treated with only one of these treatment options affords the adequate level of pest protection needed to allow entry of these articles from Mexican States adjacent to the United States/Mexico border.

*Comment:* The proposed requirements for lumber and cross-ties from Mexico should apply to all other countries.

*Response:* We do not agree that the proposed alternative methyl bromide treatment for cross-ties and pine and fir lumber from Mexico should be expanded to other countries. Indeed, in this final rule, we have limited the proposed alternative methyl bromide treatment to only cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border. We proposed methyl bromide fumigation as an alternative treatment based upon the results of an extensive pest risk assessment of wood from Mexico conducted by the U.S. Forest Service. All of the quarantine pests identified in the pest risk assessment can be mitigated by methyl bromide fumigation. This is not true for all pests known to exist in other countries.

*Comment:* APHIS should require cross-ties from Mexico imported into the United States to be treated at the point of origin in Mexico, not treated after arrival in the United States. The provision that allows cross-ties from Mexico to enter the United States untreated if they will be treated within 30 days of importation presents a high pest risk and requires less stringent importation measures for Mexico than for other countries with less diverse populations of forest pests.

*Response:* The provisions of § 319.40–5(f) that allow cross-ties to enter the United States untreated as long as they are completely free of bark and pressure treated within 30 days following importation are not new, nor do they apply only to cross-ties from Mexico. Rather, those provisions, since they became effective on August 23, 1995, have applied to cross-ties from all places except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer. Thus, the importation measures for Mexico are no different than those for other countries from which cross-ties may be imported into the United States.

Consistent with what we discussed in the proposed rule, we are amending § 319.40–5(f) in this final rule to add the requirement that the post-importation pressure treatment for cross-ties be conducted at a U.S. facility that is operating under a compliance agreement.

*Comment:* APHIS needs to add provisions to the proposal that will help prevent lumber and cross-ties imported by rail or truck from Mexico from being reinfested, or infesting U.S. forests, during transport. Such provisions may include sealed containers, requiring rail doors to remain closed, and trucks to be securely covered. The provisions should apply to movement to and within the United States.

*Response:* We believe the requirements in this rule and the applicable permits are sufficient to prevent the reinfestation of articles treated prior to shipment to the United States, as well as the infestation of U.S. forests, during transport. Lumber and cross-ties treated in Mexico are at low risk of reinfestation, or infesting U.S. forests, during transport to and within the United States. Therefore, there is little need for additional safeguards. Moreover, there is reduced risk of infestation from untreated cross-ties and lumber from Mexico due to the requirements for debarking, inspection, restrictions on commingling of regulated articles, and direct transport to a treatment facility.

*Comment:* It appears that the proposal would not require an import permit for cross-ties entering the United States from Mexico. This is inconsistent with the current regulations. APHIS should require an import permit for cross-ties from Mexico to ensure that APHIS personnel and State officials can identify, and place under compliance agreement, mills that will process the ties.

*Response:* This rule amends the regulations to provide that, with the exception of certain articles covered by general permit, unmanufactured wood articles imported into the United States from Mexican States adjacent to the United States/Mexico border are subject to substantially the same requirements that apply to those articles imported from Mexican States that are not adjacent to the United States/Mexico border. (We say ''substantially the same'' due to our inclusion of fumigation as a treatment option for cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border; otherwise, the requirements are the same.) Specifically, for articles from Mexico, this rule limits the use of a general permit under § 319.40–3(a) to the importation, from Mexican States adjacent to the United States/Mexico border, of unmanufactured mesquite wood for cooking, unmanufactured wood for firewood, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes. Accordingly, specific permits under § 319.40–2(a) will, in fact, be required for the importation of regulated articles from Mexico, including cross-ties.

*Comment:* According to the proposed text of § 319.40–5(1), cross-ties from Mexico may only be imported into the United States if they are 100 percent bark-free and have been fumigated according to the T312 treatment schedule. APHIS should also allow heat or pressure treatment of these articles.

*Response:* We currently allow cross-ties to be imported from all places,

except certain places in Asia, if they are pressure treated with a preservative in accordance with § 319.40–5(f). In this final rule, we have amended paragraph (f) of § 319.40–5 to specify that cross-ties must be pressure treated ''with a preservative.'' This has always been the way § 319.40–5(f) has been interpreted; however, we are adding, for clarification purposes, the words ''with a preservative.'' We also currently allow heat treatment of cross-ties from all places, in accordance with § 319.40–7(c). For clarification, we have amended paragraph (f) of § 319.40–5 in this final rule to indicate that cross-ties from Mexico may be imported if pressure treated with a preservative or heat treated.

As previously noted, this final rule provides an alternative treatment for cross-ties from Mexican States adjacent to the United States/Mexico border. For clarification, we have amended paragraph (l) of § 319.40–5 in this final rule to indicate that cross-ties from Mexican States adjacent to the United States/Mexico border may be imported if pressure treated with a preservative, heat treated, or fumigated.

*Comment:* Do the proposed changes for lumber apply to finished lumber, raw lumber, or both?

*Response:* The regulations do not define finished or raw lumber. The regulations in the subpart apply to regulated articles, including lumber, that are unprocessed or have received only primary processing, such as cleaning (removal of soil, limbs, and foliage), debarking, rough sawing (bucking or squaring), rough shaping, spraying with fungicide or insecticide sprays, and fumigation. Hence, for example, the regulations would apply to commercial types of lumber, such as 2 x 4's, but would not apply to processed articles such as plywood or veneer.

*Comment:* APHIS should require additional handling measures (besides segregation from domestic stock) for U.S. processing mills handling lumber from Mexico. Such requirements would help protect forests adjacent to these processing mills.

*Response:* Currently, U.S. processing facilities enter into compliance agreements. These compliance agreements specify the requirements necessary to prevent the spread of plant pests from the facility.

*Methyl Bromide Fumigation*

*Comment:* APHIS should not propose methyl bromide fumigation as a treatment option for the importation of unmanufactured wood articles from Mexico because there are effective and available alternative treatments, such as heat treatment. The continued use of methyl bromide as a quarantine treatment to control pests is allowed under the Montreal Protocol and the Clean Air Act; however, this does not necessarily mean that this treatment should be added as an option when other effective treatments exist. For example, Decisions VI/11 and VII/5 of the Meetings of the Parties to the Montreal Protocol urge all countries to refrain from the use of methyl bromide in quarantine applications and to use non-ozone depleting technologies wherever possible. Allowing the use of methyl bromide for quarantine treatment of Mexican wood articles when other effective treatments exist would be inconsistent with these decisions.

*Response:* On January 2, 2003, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** a final rule titled ''Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide'' which, among other things, sets forth the parameters for the quarantine exemption. In that final rule, the EPA stated that, ''For commodities imported to, exported from, and transported within the U.S., the exemption for quarantine applications will apply when: (1) Methyl bromide is identified within quarantine regulations as the unique treatment option for specific quarantine pests; (2) methyl bromide is identified within quarantine regulations as one among a list of treatment options for specific quarantine pests; and (3) methyl bromide is required for an emergency quarantine application'' (68 FR 242). We believe that APHIS' adoption of methyl bromide fumigation as an alternative treatment for cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border falls within these parameters.

APHIS is committed to finding environmentally acceptable alternative treatments to methyl bromide fumigation. However, we are also committed to fulfilling our certain obligations under international agreements to recognize efficacious and economically feasible quarantine treatments to control pests. In this instance, we have determined that allowing methyl bromide fumigation as an alternative treatment option for imported cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border would provide the necessary level of pest protection with minimal impact on the environment.

This determination is supported by an environmental impact statement (EIS) titled ''Rule for the Importation of Unmanufactured Wood Articles From Mexico, With Consideration for Cumulative Impact of Methyl Bromide Use,'' which considered the potential cumulative impact on the environment of methyl bromide use that could result if the proposed rule was adopted.[3] The EIS calculates that a realistic worst case scenario would be an increase in annual methyl bromide use of 24 metric tons (MT)[4] and the emissions from this increase would be 21 MT, and notes that 24 MT is less than one-tenth of 1 percent of the annual current total worldwide methyl bromide consumption (63,960 MT). The EIS further notes that the actual increase in methyl bromide use most likely would be much less than 24 MT because it is believed that most suppliers of unmanufactured wood articles from Mexican border States would choose heat treatment over methyl bromide treatment because heat treated wood is preferred for commercial purposes.

*Comment:* APHIS needs to assess, not presume, the efficacy of the proposed methyl bromide treatments for lumber and cross-ties from Mexico. One of the proposed treatment schedules, T404, was developed to address the pest risk presented by wood boring insects. Its efficacy against other pests is unknown. The other proposed treatment schedule, T312, was developed to treat logs infested with oak root fungus. Its efficacy against other pests is also unknown. Any assessment of these proposed treatment schedules should include an analysis of each treatment's effectiveness against a complex of pests in a variety of hard and soft woods.

*Response:* Methyl bromide fumigation has a long history of use for treatment of logs and other wood articles because of its high volatility, ability to rapidly penetrate most materials, and broad toxicity against a wide variety of plant pests (all life stages of insects, mites, and ticks; nematodes, including cysts; snails and slugs; and fungi, such as oak wilt fungus). Yet there is little specific

[3] Copies of the EIS may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.** The EIS may also be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/mb.html.*

[4] The EIS notes that the 1998 environmental assessment for the proposed rule estimated that the amount of methyl bromide required to fumigate wood articles was 72 MT, rather than 24 MT. The EIS clarifies that the 72 MT figure was based on potentially fumigating every unmanufactured wood article imported into the United States from Mexico, whereas the 24 MT figure is a more likely estimate of methyl bromide use on unmanufactured wood articles from only the Mexican border States.

scientific information available about the efficacy of methyl bromide fumigation against many pests and pathogens.

APHIS' Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference in the regulations, provides two methyl bromide fumigation schedules for wood products: T404 and T312. Treatment schedule T404 is a generic treatment for general insect control, while treatment schedule T312 is a more rigorous treatment that has been demonstrated to be effective in eradicating oak wilt disease. This final rule adds methyl bromide fumigation in accordance with treatment schedule T312 as an additional treatment option for imported cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border; treatment schedule T404 was not offered as a treatment option in the proposed rule and is not included in this final rule.

We believe that treatment schedule T312 will be efficacious against all quarantine pests of concern identified by the pest risk assessment. We are confident that this dose will be sufficient to mitigate any other pests of concern in or on the wood. This dose of methyl bromide has been effective in eradicating oak wilt fungus, and a much lower dose of methyl bromide (treatment schedule T404) has been effective against wood boring insects.

*Comment:* APHIS needs to develop a focused program to eliminate the use of methyl bromide. Currently, APHIS appears to be more concerned with economics and the facilitation of imports to the United States than with taking a proactive position regarding methyl bromide. The proposal only serves to enhance this impression.

*Response:* Through collaborative research agreements with the USDA's Agricultural Research Service, we continue to study alternatives to the use of methyl bromide as a phytosanitary measure. In recent years, we have approved several alternative treatments including hot forced air, hot water treatment, and irradiation.

*Solid Wood Packing Material (SWPM)*

As previously noted, this rule amends the regulations by providing that most unmanufactured wood articles, including SWPM, imported into the United States from Mexican States adjacent to the United States/Mexico border are subject to substantially the same requirements that apply to those articles imported from Mexican States that are not adjacent to the United States/Mexico border. Therefore, under the regulations, all SWPM entering the United States from Mexico must now be totally free from bark and apparently free from live plant pests or must have been heat treated, fumigated, or treated with preservatives (§ 319.40–3(b)).

*Comment:* APHIS needs to impose stricter import requirements on SWPM from Mexico. At the very least, APHIS should require that all SWPM entering the United States from Mexico be debarked before importation. As a more complete solution, APHIS should adopt the North American Plant Protection Organization's standards for risk mitigation of SWPM.

*Response:* As noted in the paragraph preceding this comment, SWPM from all areas of Mexico will now have to satisfy the requirements of § 319.40–3(b), which provides for debarking and/or treatment of SWPM as a condition of entry. These phytosanitary requirements for the entry of SWPM from Mexico are consistent with the requirements that apply to SWPM from the rest of the world, except for Canada and China. Nevertheless, we note that on May 20, 2003, we published in the **Federal Register** (68 FR 27480–27491, Docket No. 02–032–2) a proposal to amend the regulations for the importation of unmanufactured wood articles to adopt an international standard entitled ''Guidelines for Regulating Wood Packaging Material in International Trade'' that was approved by the Interim Commission on Phytosanitary Measures of the International Plant Protection Convention on March 15, 2002.

*Comment:* APHIS should prohibit, under the provisions of a gradual phase-out program, the importation of SWPM from Mexico. There are alternatives to SWPM that would not harbor pests.

*Response:* While a prohibition on SWPM from Mexico would eliminate the pest risks associated with those articles, we cannot justify such a restrictive measure given the availability of effective and less restrictive mitigation measures.

*Comment:* Additional treatment options, such as treatment with an EPA-registered borate product, should be allowed for SWPM from Mexico. These products do not affect the strength of the wood and offer natural protection against most common wood-destroying insects and decay fungi when applied through dip diffusion. Further, due to their retention in wood, borates provide protection against reinfestation for the life of the SWPM.

*Response:* We do not agree that treatment with an EPA-registered borate product should be allowed for SWPM from Mexico. As noted in the EIS, borate is a chemical that has been used to protect lumber from decay, fungi, and beetles during shipment. Borate treatments work best when the wood is kept moist during the diffusion period. Although generally considered to diffuse readily into green wood, borate may not be able to migrate through the larger dimension materials of less permeable species in the timeframes typical of imported wood products. Furthermore, borate treatments may not be effective against all life stages of insects and some fungi.

*Comment:* For the movement of certain commodities, such as food, chemical treatment of SWPM may not be acceptable to other Federal agencies. Therefore, it would be best not to allow the chemical treatment of any SWPM imported into the United States.

*Response:* Any treatment of SWPM must be in accordance with the PPQ Treatment Manual and any other applicable Federal laws and regulations, including the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

*Comment:* SWPM made of reused wood consistently has a moisture content of less than 20 percent and, therefore, greater resistance to pest infestation. APHIS should allow this type of SWPM to be marked and be exempt from the proposed regulations. This change would be in accordance with § 319.40–3(b)(4)(ii) of the current regulations.

*Response:* Current § 319.40–3(b)(4) contains specific provisions regarding the importation of pallets moved as cargo, and thus does not apply to the SWPM referred to by the commenter. Because SWPM is very often re-used, recycled, or remanufactured, the true origin of any piece of SWPM is difficult to determine and thus its phytosanitary status cannot be ascertained. As previously noted, on May 20, 2003, we published in the **Federal Register** (68 FR 27480–27491, Docket No. 02–032–2) a proposal to amend the regulations for the importation of unmanufactured wood articles to adopt an international standard entitled ''Guidelines for Regulating Wood Packaging Material in International Trade.''

*Comment:* The provisions of the proposed rule that relate to the importation of SWPM from Mexico are not cost-effective. The proposed changes will raise costs for the Mexican business community and result in Mexico adding requirements for U.S. exports to that country, which will mean added costs for U.S. businesses and U.S. consumers. This proposal will also result in costly delays at U.S. ports of entry. Also, if more contract inspectors are hired to

meet demand, the proposal could result in the inconsistent enforcement of regulatory requirements. Further, this proposal could result in a shift from affordable SWPM to non-wood substitutes, thereby creating potential environmental and disposal problems for U.S. businesses. Because whatever changes APHIS decides to make to the importation of SWPM from Mexico will likely be costly and disruptive, a 5-year phase-in period should be allowed.

*Response:* This rule amends the regulations by providing that unmanufactured wood articles, including SWPM, imported into the United States from Mexican States adjacent to the United States/Mexico border are subject to substantially the same requirements that apply to those articles from Mexican States that are not adjacent to the United States/Mexico border. The economic analysis in the proposed rule noted that a negligible amount of SWPM that is untreated or not free of bark has historically entered the United States from the northern border States of Mexico. Indeed, the economic analysis went on to note that nearly all SWPM from Mexico's border States already meets the entry requirements that will be imposed by this rule.

Accordingly, we do not anticipate that this rule will raise costs for the Mexican business community such that Mexico will add requirements for U.S. exports to Mexico, resulting in added costs for U.S. businesses and consumers. Furthermore, since nearly all SWPM from Mexico's border States already meets the entry requirements that will be imposed by this rule, we do not expect that this rule will result in costly delays at U.S. ports of entry, inconsistent enforcement by inspectors, or the use of non-wood substitutes for SWPM. Finally, we do not agree that a 5-year phase-in of these regulations is necessary. As previously noted, nearly all SWPM from Mexico's border States already meets the entry requirements that will be imposed by this rule. Therefore, we do not expect that this rule will be costly and disruptive, necessitating a 5-year phase-in of the regulations.

*Firewood and Small Quantities of Wood for Personal Use*

*Comment:* APHIS should ensure that any commercial or noncommercial shipments of mesquite wood for cooking and firewood, and small, noncommercial shipments of unmanufactured wood for personal cooking or medicinal purposes, imported into the United States under general permit from Mexico are: From Mexican border States, inspected for the presence of dangerous insects, and subject to appropriate remedial measures if suspicious organisms are found.

*Response:* We agree that it is important to inspect and determine the origin of noncommercial shipments of mesquite wood for cooking and firewood, and small, noncommercial shipments of unmanufactured wood for personal cooking or medicinal purposes. Accordingly, we have amended § 319.40–3 in this final rule to indicate that noncommercial shipments would be subject to inspection and other requirements of § 319.40–9 and must be accompanied by an importer document or oral declaration stating that they are derived from trees harvested in States in Mexico adjacent to the United States border. In the proposed rule, we acknowledged that it would not be administratively feasible to require an importer document for such noncommercial shipments. However, by allowing oral declarations, we anticipate that APHIS will have the resources to carry out this added requirement. We note that all shipments are subject to inspection upon entry into the United States and mitigation if quarantine significant pests are intercepted.

*Comment:* Diseases and insects can be transported on firewood and small quantities of wood for personal use. Therefore, APHIS should not retain provisions to allow such articles from Mexico to enter the United States under general permit.

*Response:* As noted in the proposed rule, we do not believe that firewood and small quantities of unmanufactured wood for personal use pose a significant pest risk. Firewood does not pose a significant pest risk because of its limited distribution and consumption near the United States/Mexico border. Similarly, small, noncommercial packages of unmanufactured wood to be used for personal cooking or personal medicinal purposes does not pose a significant pest risk because the packages are limited in quantity and therefore easily inspected, and likely will be distributed and consumed near the border.

*Wood Chips*

*Comment:* APHIS should establish treatment requirements, such as steam heat or fumigation, for the phytosanitary treatment of wood chips from Mexico, as well as wood chips from other countries.

*Response:* Such treatment requirements are already in place. Specifically, § 319.40–6(c) of the current regulations contains the entry requirements, including treatments, for wood chips from all parts of the world, except for certain places in Asia.

*Systems Approach*

*Comment:* APHIS should use a systems approach to mitigate the risk of introducing dangerous pests into the United States in unmanufactured wood articles from Mexico. The steps of the approach could include targeting certain pests, rather than articles, in Mexico; establishing programs to control the presence of these pests in Mexico; and cooperating with Mexican authorities to monitor pest outbreaks and to apply specific measures to prevent the introduction of these pests into the United States. Such an approach would be beneficial to U.S. businesses, consumers, and forest resources.

*Response:* We believe the phytosanitary measures used as entry requirements for unmanufactured wood articles afford the United States the appropriate level of protection against plant pests and are the least restrictive of trade. However, we would consider any specific suggestions for alternative phytosanitary measures, including a systems approach, for unmanufactured wood articles.

*Environmental Analysis*

*Comment:* APHIS' environmental assessment that accompanied the proposal omits important information, uses outdated information to analyze the proposal's effects (including the effects that the methyl bromide treatment option would have on our environment), and presents an inadequate comparison of alternatives.

*Response:* As noted previously, we prepared an EIS titled ''Rule for the Importation of Unmanufactured Wood Articles From Mexico, With Consideration for Cumulative Impact of Methyl Bromide Use'' following the publication of the proposed rule to consider the increase in methyl bromide use for wood imports from Mexico that could result from the adoption of the proposed rule. The focus of the EIS is the incremental contribution of methyl bromide use from the proposed action when added to other methyl bromide uses for the cumulative impact on the environment. The EIS discusses alternatives to the proposed rule, the environmental consequences of methyl bromide on the environment, and the potential cumulative impact of methyl bromide use associated with the proposed rule.

*Economic Analysis*

*Comment:* It is untrue that the majority of firms likely to be impacted

by this rule are located in the southwestern United States. Unmanufactured wood articles from Mexico can be shipped wherever there is a U.S. market for them.

*Response:* In our economic analysis, we did not definitively state that the majority of small entities likely to be affected would be located in the southwestern United States, we only presumed that would be the case. This presumption was based on the geographic proximity of the southwestern United States to exporting Mexican border States, and considered the small fraction of the U.S. supply of unmanufactured wood articles imported from Mexico, and the even smaller percentage originating in the Mexican border States. If unmanufactured wood articles from Mexico are shipped throughout the United States, the effects on small entities in the United States would be so spread out as to be considered negligible.

*Miscellaneous*

*Comment:* APHIS should establish adequate compliance monitoring to ensure that unmanufactured wood articles from Mexico entering the United States under permit to be treated later or heat treated prior to importation are indeed treated and handled in conformance with the regulations.

*Response:* We believe the current monitoring program is sufficient to ensure compliance with the regulations. For wood articles treated prior to entry, inspectors review treatment documentation at the ports of entry for compliance with the regulations. For untreated wood articles, inspectors verify that all applicable requirements in the regulations have been met and that all required import documentation is in order before allowing the articles to move to approved processing facilities. An approved processing facility must enter into a compliance agreement before it can receive untreated wood articles from Mexico. These compliance agreements contain stipulations relating to proper compliance with the regulations. The facilities are inspected prior to entering into the compliance agreement and undergo random monitoring visits. All of these provisions are designed to ensure compliance with the regulations.

*Comment:* APHIS should describe how kiln drying will provide adequate protection from pest infestation, particularly fungi.

*Response:* We are confident that kiln drying will provide sufficient protection from pest infestation. The effectiveness of dry heat against wood boring insects is well-documented in the Dry Kiln Operator's Manual, which is incorporated by reference in the regulations, as well as in many published articles. Moisture reduction, such as kiln drying, is also effective for fungi. Since fungi require a moist environment in which to grow, moisture reduction deprives the fungi of the necessary wetness to grow while the elevated temperature makes it difficult for fungal spores to survive. Although it could be argued that heat penetration is more efficient under moist environments, we believe that requiring moist heat would cause damage, such as warping, to the wood being treated.

*Comment:* Kiln drying capacity in Mexico is very limited. Therefore, until more kiln drying facilities are built in Mexico, few articles will be able to be kiln dried there.

*Response:* Pretreatment of wood articles by kiln drying is not the only option allowed under the regulations. Heat treatments, including kiln drying, are allowed to be completed after entry into the United States. Also, this rule allows methyl bromide fumigation as an option for imported cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border.

*Comment:* Since previous assumptions of risk levels have been shown to be in error, it may be time for APHIS to review the risk associated with Canadian unmanufactured wood articles.

*Response:* Given the pest risk assessment that found that a significant pest risk exists in the movement of raw wood material into the United States from the adjacent States of Mexico, we agree that we need to determine the pest risk associated with unmanufactured wood articles from Canada. Accordingly, we have initiated a pest risk assessment for unmanufactured wood articles from Canada.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this final rule, we have prepared an economic analysis that provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this rule on small entities as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

We are amending the regulations to add restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from the northern border States of Mexico. This rule requires that these wood articles meet certain treatment and handling requirements to be eligible for importation into the United States. This action is necessary to prevent the introduction into the United States of plant pests, including forest pests, with unmanufactured wood articles from Mexico.

Specifically, we are amending the regulations as follows:

- By limiting the applicability of the general permit in § 319.40–3 for unmanufactured wood articles from Mexican States adjacent to the United States/Mexico border to unmanufactured mesquite wood for cooking, unmanufactured wood for firewood, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes.
- By making all other unmanufactured wood articles imported from Mexican States adjacent to the United States/Mexico border subject to substantially the same entry requirements that apply to those articles from the rest of Mexico.
- By adding methyl bromide fumigation as a treatment option for debarked pine and fir lumber imports and railroad cross-ties imported from Mexican States adjacent to the United States/Mexico border.

Alternatives to the rule would be to not make any changes at all, prohibit unmanufactured wood articles from Mexican States adjacent to the United States/Mexico border, or not include methyl bromide fumigation as a treatment alternative. If the regulations are left unchanged, pest risks identified in the Forest Service risk assessment would not be addressed. Risks to U.S. agricultural and forestry resources would remain at their current unacceptable level. By placing unmanufactured wood imports from Mexican States adjacent to the United States/Mexico border under substantially the same phytosanitary restrictions as the rest of Mexico, the border Mexican States will be able to continue to export these commodities to the United States.

Prohibition of unmanufactured wood imports from Mexican States adjacent to

the United States/Mexican border would be inconsistent with APHIS' position that effective means of pest risk mitigation are available. Not including methyl bromide fumigation as a treatment option could limit unmanufactured wood imports from Mexican States adjacent to the United States/Mexico border if alternative means of treatment in the region are of insufficient capacity. Insufficient kiln drying capacity is possible because unmanufactured wood articles currently enter the United States from Mexican States adjacent to the United States/Mexico border under general permit and phytosanitary treatment is not required. In sum, the amended regulations, in providing a set of balanced, science-based requirements in response to identified pest risks, is the preferred alternative.

Approximated percentages of unmanufactured softwood imports that originate in Mexican States adjacent to the United States/Mexico border are used to evaluate the impact of the regulatory amendments. In its pest risk assessment, the Forest Service used pine and fir pests as surrogates for determining overall pest risks. Similarly, this analysis focuses on softwood imports, since they comprise over 90 percent, by value, of lumber and wood molding imported by the United States from Mexico and globally.

Molding is the most significant of softwood imports from Mexico, comprising over 60 percent. This commodity group includes both manufactured and unmanufactured articles. Available statistics do not allow for the two categories of softwood molding imports to be distinguished. Since only unmanufactured wood articles are affected by this rule, two analyses are performed, one including and one excluding softwood molding.

We approximate that between 35 and 40 percent, by value, of softwood articles imported from Mexico originate in Mexican States adjacent to the United States/Mexico border. When molding is not included in the analysis, the total annual value of articles originating in Mexican States adjacent to the United States/Mexico border is about $19.3 million. When softwood molding is included, the total value is about $53.9 million.

The significance of these values can be put in perspective by comparing them to overall U.S. import and supply levels. Unmanufactured wood articles include a variety of commodities, but the main U.S. import, softwood lumber, provides a reasonable basis for comparison. Global imports contribute about one-fourth of the U.S. softwood lumber supply, and imports from Mexico comprise about 0.8 percent of total imports. Thus, Mexico's share of the U.S. supply is only about 0.2 percent. Given that about 35 to 40 percent of Mexico's softwood lumber shipments to the United States originates in Mexican States adjacent to the United States/Mexico border, shipments from these border Mexican States represent about 0.3 percent of softwood lumber imports by the United States, and less than 0.1 percent of U.S. supply.

Including softwood molding articles in the analysis increases the level of imports from Mexico (and the approximated import level from Mexican States adjacent to the United States/Mexico border) by a factor of about 2.8. Mexico's share of U.S. imports of softwood lumber and softwood molding is about 2.1 percent. Shipments from Mexican States adjacent to the United States/Mexico border of these principal softwood articles represent about 0.8 percent of U.S. imports (35 to 40 percent of 2.1 percent). Since at least some softwood molding articles are manufactured, this percentage exceeds the amount of softwood imports affected by the regulatory amendments, but serves here as an upper bound. Thus, between 0.3 percent and 0.8 percent of U.S. imports of unmanufactured wood articles originate in Mexican States adjacent to the United States/Mexico border.

The most common method used to treat unmanufactured wood articles entering the United States is kiln drying. The cost of kiln drying, based on recent prices for green and kiln-dried framing lumber in the United States, ranges between $23 and $30 per thousand board feet. This cost range is equivalent to between $9.75 and $12.71 per cubic meter ($m^3$). Methyl bromide fumigation costs in the United States average about $400 to $600 per standard container. This range in fumigation costs for lumber shipments, assuming containers are loaded 80 to 90 percent of capacity, converts to $6.13 to $10.34 per $m^3$ of lumber.

Kiln drying and methyl bromide fumigation costs in Mexico may differ from those in the United States, but any difference in the relative costs of the two treatment methods is not thought to be significant. APHIS does not know the extent to which either method will be used to treat unmanufactured wood articles imported from Mexican States adjacent to the United States/Mexico border. The decision will depend not only on relative costs, but also on the value added through kiln drying and on the availability of kiln drying capacity in the border Mexican States.

In the United States, kiln-dried softwood lumber is commercially preferred, and temperatures attained in the kiln drying process exceed those required for heat treatment with moisture reduction. Kiln drying of unmanufactured wood imports thus serves to increase its commercial value while satisfying phytosanitary treatment requirements. Importers are likely to choose kiln drying as the preferred treatment method when treatment costs are similar.

The advantage of kiln drying over methyl bromide fumigation presupposes sufficient kiln drying capacity within the region. Kiln drying facilities are not as likely to be found in Mexican States adjacent to the United States/Mexico border as they are in other Mexican States where phytosanitary treatment of unmanufactured wood articles exported to the United States has been required. Pine and fir lumber imports from Mexican States adjacent to the United States/Mexico border would be constrained if there is insufficient kiln drying capacity and if heat treatments with or without moisture reduction were the only phytosanitary treatment alternatives (not considering other options of using kiln drying facilities elsewhere in Mexico or in the United States within 30 days following importation). Inclusion of methyl bromide fumigation as a treatment alternative lessens the possibility that pine and fir lumber imports from Mexican States adjacent to the United States/Mexico border may be impeded due to insufficient kiln drying capacity in the region, as firms adjust to the new treatment requirements.

Economic effects of the treatment requirements for U.S. importers will be minor, given the small quantity of unmanufactured wood articles imported from Mexican States adjacent to the United States/Mexico border and the minor costs of treatment. The value of unmanufactured softwood articles imported annually from Mexican States adjacent to the United States/Mexico border ranges between $19.3 million and $53.9 million, depending on the portion of softwood molding that is unmanufactured. These values represent from 0.3 to 0.8 percent of the value of all U.S. imports of these articles.

Costs of kiln drying and methyl bromide fumigation are small when compared to the value of the wood articles treated. The average price of softwood lumber imported from Mexico in 1999 and 2000 was about $343 per $m^3$. Methyl bromide fumigation costs of about $6 to $10 per $m^3$ and kiln drying

costs of about $10 to $13 per $m^3$ are equivalent to about 2 to 4 percent of this import price. Assuming that treatment costs are equal to 4 percent of the value of the commodities imported and that importers bear the full cost of treatment, the combined treatment cost for U.S. importers of unmanufactured wood articles from Mexican States adjacent to the United States/Mexico border would total between $773,000 and $2,157,000 per year, depending on the percentage of wood molding imports that is unmanufactured.

This expenditure is an acceptable cost when one considers possible adverse impacts for the Nation's agriculture and forests if unmanufactured wood articles are allowed to continue to enter from Mexican States adjacent to the United States/Mexico border under general permit. The possibility of pest introductions that could cost the United States tens of millions of dollars a year necessitates that these imports be subject to substantially the same mitigation measures as are required of unmanufactured wood articles imported from the rest of Mexico.

As a part of the rulemaking process, APHIS evaluates whether new regulations are likely to have a significant economic impact on a substantial number of small entities. Entities that import unmanufactured wood articles that originate in Mexican States adjacent to the United States/Mexico border will be directly affected. The impact will be the cost of newly required phytosanitary treatments.

Principal industries affected by the new regulations will be (by North American Industry Classification System category): Sawmills and Wood Preservation; Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers; Other Miscellaneous Durable Goods Merchant Wholesalers; and Construction of Buildings. The Small Business Administration has established criteria for determining whether an establishment may be considered small with respect to the Regulatory Flexibility Act. Nearly all establishments that will be affected are small entities.

The impact of additional costs of treatment for U.S. small entities will be minor, given that only between 0.3 and 0.8 percent of unmanufactured wood articles imported by the United States come from Mexican States adjacent to the United States/Mexico border, and costs of treatment are equal to between 2 and 4 percent of the value of the imported articles. Moreover, commercial benefits of kiln drying will be realized when that treatment alternative is used. A substantial number of small entities will not be significantly affected by the regulatory amendments. Small as well as large U.S. entities will benefit from reduced risks of pest introduction.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Use of Methyl Bromide**

The United States is fully committed to the objectives of the Montreal Protocol, including the reduction and ultimately the elimination of reliance on methyl bromide for quarantine and pre-shipment uses in a manner that is consistent with the safeguarding of U.S. agriculture and ecosystems. APHIS reviews its methyl bromide policies and their effect on the environment in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Decision XI/13 (paragraph 5) of the 11th Meeting of the Parties to the Montreal Protocol, which calls on the Parties to review their ''national plant, animal, environmental, health, and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and pre-shipment where technically and economically feasible alternatives exist.''

The United States Government encourages methods that do not use methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. In some circumstances, however, methyl bromide continues to be the only technically and economically feasible treatment against specific quarantine pests. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment caused by methyl bromide emissions.

**National Environmental Policy Act**

On September 20, 2002, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** (67 FR 59284–59285) a notice of availability of the final environmental impact statement (EIS) titled ''Rule for the Importation of Unmanufactured Wood Articles From Mexico, With Consideration for Cumulative Impact of Methyl Bromide Use.'' The EIS considers the incremental increase in methyl bromide use for wood imports from Mexico that could result from our adoption of the proposed rule as a final rule.[5] The EIS was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Pursuant to the implementing regulations for NEPA, in cases requiring an EIS, APHIS must prepare a record of decision at the time of its decision. This final rule constitutes the required record of decision for the EIS.

The NEPA implementing regulations require that a record of decision state what decision is being made; identify alternatives considered in the environmental impact statement process; specify the environmentally preferable alternative; discuss preferences based on relevant factors—economic and technical considerations, as well as national policy considerations, where applicable; and state how all of the factors discussed entered into the decision. In addition, the record of decision must indicate whether the ultimate decision has been designed to avoid or minimize environmental harm and, if not, why not.

*The Decision*

APHIS has decided, in this final rule, to amend its regulations to provide that pine and fir logs and lumber, as well as other unmanufactured wood articles, imported into the United States from

[5] Copies of the EIS are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, the EIS may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/mb.html,* and copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Mexican States adjacent to the United States/Mexico border will be subject to substantially the same requirements as Mexican States not adjacent to the United States. Methyl bromide fumigation has been added as an optional treatment for railroad cross-ties and pine and fir lumber from Mexican States adjacent to the United States/Mexico border.

*Alternatives Considered in the Impact Statement Process*

The EIS, which focuses mainly on cumulative effects of methyl bromide use, considers a reasonable range of alternatives, including: (1) No action, essentially maintaining the exemption from treatment requirements for importation of unmanufactured wood articles from Mexican States that border the United States, (2) removal of the Mexican border State exemption, requiring the same treatments for similar commodities as non-border Mexican States, (3) permitting use of methyl bromide as a treatment option for railroad cross-ties and pine and fir lumber from Mexico, (4) a combination of alternatives (2) and (3), above, and (5) prohibiting the importation of unmanufactured wood articles from Mexico.

*Environmentally Preferable Alternative*

The environmentally preferable alternative would be to prohibit importation of unmanufactured wood articles from Mexico, which would virtually eliminate all associated pest risks, as well as the need to use methyl bromide. However, APHIS believes that this alternative would be more trade restrictive than necessary to prevent the introduction into the United States of plant pests from Mexico.

*Preferences Among Alternatives*

There is a preference for the approach taken in this final rule, which we adopt herein (alternative (4), above). Among all of the alternatives considered, APHIS believes that this alternative best satisfies all of our international and domestic obligations, including the North American Free Trade Agreement (NAFTA), the Montreal Protocol, the Plant Protection Act (PPA), NEPA, and the Clean Air Act.

*Factors in the Decision*

APHIS is guided by the PPA, under which the detection, control, eradication, suppression, prevention, and retardation of the spread of plant pests or noxious weeds have been determined by Congress to be necessary and appropriate for the protection of the agriculture, environment, and economy of the United States. The PPA also has been designed to facilitate exports, imports, and interstate commerce in agricultural products and other commodities. In order to achieve these objectives, use of pesticides, including methyl bromide, has often been prescribed.

Methyl bromide is an ozone depleting substance that is strictly regulated under the Montreal Protocol and the Clean Air Act. While the goal of these authorities and agreements is to limit and ultimately phase out all ozone depleting substances, certain exemptions and exclusions are recognized, including an exemption for methyl bromide use for plant quarantine and pre-shipment purposes, including the purposes provided for in this final rule. The exemption is not unconditional, however. The United States, like other signatories to the Montreal Protocol, must review its national plant health regulations with a view to removing the requirement for the use of methyl bromide for quarantine and preshipment application where technically and economically feasible alternatives exist.

By authorizing and encouraging limited use of methyl bromide—only so much as is necessary to meet the mandates of the PPA—for imports from Mexican border States, the Agency is achieving the purposes of its enabling legislation, while promoting the goals of the Montreal Protocol, the Clean Air Act, NEPA, and other applicable authorities or agreements.

*Avoid or Minimize Environmental Harm*

The environment can be harmed by using methyl bromide, in which case recovery of the ozone layer may be delayed, or by not using methyl bromide, in which case agriculture and forested ecosystems, among other aspects of environmental quality, could be devastated. By assuring that use of methyl bromide is limited only to those situations in which substitute materials are not available and only in those amounts necessary to eliminate pest threats to agriculture and ecosystems, the Agency strikes a proper balance in its efforts to minimize environmental harm. APHIS is committed to monitoring these efforts through the NEPA process, and otherwise. (*See,* for example, the final EIS titled ''Importation of Solid Wood Packing Material, Final Environmental Impact Statement'' for which a notice of availability was published in the **Federal Register** (68 FR 54900–54901) on September 19, 2003.) Furthermore, where appropriate, measures—gas recapture technology, for example—to minimize harm to environmental quality caused by methyl bromide emissions have been, and will continue to be, put in place by APHIS.

*Other*

Methyl bromide used in quarantine applications prescribed by the United States contributes just a small fraction of total anthropogenic bromine released into the atmosphere. Nevertheless, the Montreal Protocol is action-forcing in the sense that signatories must review their national plant health regulations with a view to finding alternatives to exempted uses of methyl bromide. The EPA has also cautioned that, regardless of the incremental contribution, it is important to recognize that any additional methyl bromide releases would delay recovery of the ozone layer.

A considerable amount of research and development on methyl bromide alternatives has been conducted within the USDA and continues today. Under the Clean Air Act, EPA has also established a program to identify alternatives to ozone depleting substances, including methyl bromide. But EPA's listing of an acceptable alternative does not always adequately address its suitability for a particular use. We must not put agriculture and ecosystems at risk based on unproven technology.

APHIS is firmly committed to the objectives of the Montreal Protocol to reduce and ultimately eliminate reliance on methyl bromide for quarantine uses, consistent with its responsibilities to safeguard this country's agriculture and ecosystems. Searching for cost-effective alternatives to major quarantine and pre-shipment uses of methyl bromide, then, is an Agency—indeed, a worldwide—priority. In order to achieve the twin objectives of reducing and ultimately eliminating methyl bromide emissions while safeguarding agriculture and ecosystems in the most expeditious, cost-effective way possible, research, developmental, and testing efforts within the Federal Government must be closely coordinated. APHIS is determined to cooperate actively with the Agricultural Research Service, EPA, the Office of Management and Budget, and others involved in this effort to find effective alternatives to quarantine methyl bromide uses.

In a letter dated October 25, 2002, EPA stated that it has no objections to the alternative selected by APHIS. Copies of the EPA letter may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0049.

**Government Paperwork Elimination Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**List of Subjects in 7 CFR Part 319**

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

## PART 319–FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

**§ 319.40–2 [Amended]**

■ 2. Section 319.40–2 is amended by adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

■ 3. Section 319.40–3 is amended as follows:

■ a. By revising paragraph (a) to read as set forth below.

■ b. By adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

**§ 319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.**

(a) *Canada and Mexico.* (1) The following articles may be imported into the United States under general permit:

(i) From Canada: Regulated articles, other than regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae; and

(ii) From States in Mexico adjacent to the United States: Commercial and noncommercial shipments of mesquite wood for cooking; commercial and noncommercial shipments of unmanufactured wood for firewood; and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes.

(2) Commercial shipments allowed in paragraph (a)(1) of this section are subject to the inspection and other requirements in § 319.40–9 and must be accompanied by an importer document stating that they are derived from trees harvested in Canada or States in Mexico adjacent to the United States border.

(3) Noncommercial shipments allowed in paragraph (a)(1) of this section are subject to inspection and other requirements of § 319.40–9 and must be accompanied by an importer document or oral declaration stating that they are derived from trees harvested in Canada or States in Mexico adjacent to the United States border.

* * * * *

**§ 319.40–4 [Amended]**

■ 4. Section 319.40–4 is amended by adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

■ 5. Section 319.40–5 is amended as follows:

■ a. By revising paragraph (f) to read as set forth below.

■ b. By adding a new paragraph (l) to read as set forth below.

■ c. By adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control numbers 0579–0049 and 0579–0135)''.

**§ 319.40–5 Importation and entry requirements for specified articles.**

* * * * *

(f) Cross-ties (railroad ties) from all places, except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer, may be imported if completely free of bark and accompanied by an importer document stating that the cross-ties will be pressure treated with a preservative within 30 days following the date of importation at a U.S. facility under compliance agreement. Cross-ties (railroad ties) may also be imported if heat treated in accordance with § 319.40–7(c).

* * * * *

(l) *Cross-ties (railroad ties) and pine and fir lumber from Mexican States adjacent to the United States/Mexico border.*[3] Cross-ties (railroad ties) 8 inches or less at maximum thickness and lumber derived from pine and fir may be imported from Mexican States adjacent to the United States/Mexico border into the United States if they:

(1) Originate from Mexican States adjacent to the United States/Mexico border;

(2) Are 100 percent free of bark; and

(3) Are fumigated prior to arrival in the United States. The regulated article and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T312 contained in the Treatment Manual. In lieu of the schedule T312 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 240 g/m$^3$ with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration.

**§ 319.40–6 [Amended]**

■ 6. Section 319.40–6 is amended by adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

**§ 319.40–7 [Amended]**

■ 7. Section 319.40–7 is amended by adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

**§ 319.40–8 [Amended]**

■ 8. Section 319.40–8 is amended by adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

**§ 319.40–9 [Amended]**

■ 9. Section 319.40–9 is amended as follows:

■ a. By redesignating footnotes 3 and 4 as footnotes 4 and 5, respectively.

■ b. By adding, at the end of the section, the following:

''(Approved by the Office of Management and Budget under control number 0579–0049)''.

**§ 319.40–10 [Amended]**

■ 10. In § 319.40–10, footnote 5 is redesignated as footnote 6.

[3] Cross-ties (railroad ties) may also be imported in accordance with paragraph (f) of this section, or may be imported if heat treated in accordance with § 319.40–7(c).

Done in Washington, DC, this 20th day of August 2004.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 04–19519 Filed 8–25–04; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 78

**[Docket No. 01–015–2]**

### Brucellosis in Cattle; State and Area Classifications; Missouri

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Missouri from Class A to Class Free. The interim rule was based on our determination that Missouri meets the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Missouri.

**DATES:** *Effective Date:* The interim rule became effective on February 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr. Debra A. Donch, National Brucellosis Epidemiologist, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

**SUPPLEMENTARY INFORMATION:**

### Background

In an interim rule effective February 26, 2004, and published in the **Federal Register** on March 2, 2004 (69 FR 9747–9749, Docket No. 01–015–1), we amended the brucellosis regulations in 9 CFR part 78 (referred to below as the regulations) concerning the interstate movement of cattle by changing the classification of Missouri from Class A to Class Free. The interim rule was based on our determination that Missouri meets the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Missouri.

Comments on the interim rule were required to be received on or before May 3, 2004. We received one comment by that date, from a private citizen. This commenter was opposed to the change in Missouri's classification. The issues raised by the commenter are discussed below.

The commenter objected to the use of the word ''free'' to describe a State or area designated as Class Free for brucellosis on the basis that our regulations do not require every animal in a State or area be tested; the commenter asserted, therefore, that we cannot be certain that a State or area classified as Class Free is free of brucellosis.

The regulations provide a system for classifying States or areas of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. To attain and maintain Class Free status, a State or area must, among other requirements, (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the consecutive 12-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. A full listing of the standards that a State must meet to be classified as Class Free may be found in the definition of *Class Free State* in § 78.1 of the regulations. We have no evidence that testing every animal, as the commenter suggests, would increase the accuracy of the classification system to a degree that would warrant the massive additional burden of testing every animal in a State or area.

The last brucellosis-infected cattle herd in Missouri was depopulated in October 2002. Since then, no brucellosis-affected herds have been detected. After reviewing the brucellosis program records for Missouri, we have concluded that this State meets the standards for Class Free status. Accordingly, the interim rule designated Missouri as a Class Free State for brucellosis, thereby relieving certain restrictions on the interstate movement of cattle from Missouri. We have no evidence that Missouri should not have been classified Class Free and the commenter did not provide any such evidence. We are making no changes in response to this comment.

The commenter asserted that our immediate action to change the classification of Missouri from Class A to Class Free was not warranted.

It is important to reclassify States when they have met the criteria for reclassification as Class Free. This encourages cooperation and compliance with the brucellosis control and eradication program and regulations by relieving certain restrictions on the interstate movement of cattle when they are determined to be no longer necessary. We have no evidence indicating that Missouri does not meet the standards for being declared Class Free, and the commenter did not provide any such evidence. We are making no changes in response to this comment.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

### List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

### PART 78—BRUCELLOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 69 FR 9747–9749 on March 2, 2004.

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 19th day of August, 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–19517 Filed 8–25–04; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9154]**

**RIN 1545–BD64**

### Extension of Time To Elect Method for Determining Allowable Loss

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations under section 1502 of the Internal Revenue Code of 1986. The temporary regulations extend the time for consolidated groups to elect to apply a method for determining allowable loss on a disposition of subsidiary stock, and permit consolidated groups to revoke such elections. The temporary regulations affect corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective August 26, 2004.

*Applicability Date:* For dates of applicability, see § 1.1502–20T(i)(6)(v).

**FOR FURTHER INFORMATION CONTACT:** Theresa Abell (202) 622–7700 or Martin Huck (202) 622–7750 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

The collection of information contained in these regulations has been previously reviewed and approved by the Office of Management and Budget under control number 1545–1774. Responses to this collection of information are required to obtain a benefit. This collection of information is revised by these regulations. These amended regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the revised collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1774.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

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.

## Background and Explanation of Provisions

On March 7, 2002, the IRS and Treasury Department issued regulations (the 2002 regulations) permitting consolidated groups to calculate allowable loss or the basis reduction required on certain dispositions and deconsolidations of subsidiary stock by applying § 1.1502–20 in its entirety, § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or § 1.337(d)–2T. If a consolidated group chose to apply either § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or § 1.337(d)–2T, the 2002 regulations required the consolidated group to file an election under § 1.1502–20T(i) to apply the chosen provision. The 2002 regulations also included several correlative rules to address cases in which, as a result of the election, additional losses became available to the subsidiary the stock of which was disposed of.

Concurrently with the publication of these temporary regulations, the IRS and Treasury Department are publishing Notice 2004–58 (2004–39 I.R.B.) (September 27, 2004). That Notice sets forth a method that the IRS will accept for determining whether subsidiary stock loss is disallowed and subsidiary stock basis is reduced under § 1.337(d)–2T.

Given the availability of the method described in Notice 2004–58, the IRS and Treasury Department are publishing these temporary regulations to permit taxpayers to make, amend, or revoke elections under § 1.1502–20T(i). These temporary regulations give taxpayers the ability to take the Notice into account in choosing a method for determining allowable loss. In general these regulations allow taxpayers to elect into, or out of, the application of § 1.1502–20 in its entirety, § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or § 1.337(d)–2T. Under these regulations, a taxpayer that was permitted to make an election under § 1.1502–20T(i), but did not previously make such an election, may make an election to apply either § 1.1502–20 without regard to the duplicated loss factor, or § 1.337(d)–2T. These regulations also permit a taxpayer that previously made an election to apply § 1.1502–20 without regard to the duplicated loss factor to revoke the election and apply § 1.1502–20 in its entirety, or to amend the election in order to apply § 1.337(d)–2T. In addition, these regulations permit a taxpayer that previously made an election to apply § 1.337(d)–2T to revoke the election and apply § 1.1502–20 in its entirety or to amend the election in order to apply § 1.1502–20 without regard to duplicated loss factor. Finally, these regulations extend relief to acquiring groups by amending § 1.1502–32T(b)(4)(b)(vii)(C) to change its date of applicability from May 7, 2003, to August 26, 2004.

If a group revokes an election to apply either § 1.1502–20 without regard to the duplicated loss factor, or § 1.337(d)–2T, and applies § 1.1502–20 in its entirety, no election under § 1.1502–20(g) will be available, even if the group had previously made an election under § 1.1502–20(g) to reattribute losses of the subsidiary the stock of which was disposed of.

Pursuant to these regulations, an election under § 1.1502–20T(i) must be made, amended, or revoked by including the statement required with a timely filed (including extensions) original return for a taxable year that includes any date on or before August 26, 2004, or with or as part of an amended return filed before the date the original return for the taxable year that includes August 26, 2004, is due (including any extensions). The new election or the revocation or amendment of a prior election, however, only will affect open years.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary regulations provide relief to consolidated groups by extending the time to elect a method for determining allowable loss. The extension of time allows taxpayers to take into account concurrent guidance in choosing a method for determining allowable loss. It is necessary to provide the extension of time immediately. Accordingly, good cause is found for dispensing with prior notice and comment pursuant to 5 U.S.C. 553(b) and for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d). For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), see the notice of proposed

rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. The IRS and Treasury Department request comments from small entities that believe they might be adversely affected by these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for the Advocacy of the Small Business Administration for comment on their impact.

**Drafting Information**

The principal authors of these regulations are Theresa Abell and Martin Huck of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 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 1.1502–20T(i) is amended by:
■ 1. Revising the first sentence of paragraph (i)(4).
■ 2. Redesignating paragraph (i)(6) as (i)(7).
■ 3. Adding new paragraph (i)(6).

The revision and addition read as follows:

**§ 1.1502–20T Disposition or deconsolidation of subsidiary stock (temporary).**

* * * * *

(i) * * *

(4) *Time and manner of making the election.* An election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section is made by including the statement required by this paragraph with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before August 26, 2004, or with or as part of an amended return filed before the date the original return for the taxable year that includes August 26, 2004, is due (including any extensions). * * *

* * * * *

(6) *Revocation or amendment of prior elections*—(i) *In general.* Notwithstanding anything to the contrary in this paragraph (i), if a consolidated group made an election under paragraph (i) of this section to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section, the consolidated group may revoke or amend that election as provided in this paragraph (i)(6).

(ii) *Time and manner of revoking or amending an election.* An election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section is revoked or amended by including the statement required by paragraph (i)(6)(iii) of this section with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before August 26, 2004, or with or as part of an amended return filed before the date the original return for the taxable year that includes August 26, 2004, is due (including any extensions).

(iii) *Required statement*—(A) *Revocation.* To revoke an election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section, the consolidated group must file a statement entitled ''Revocation of Election Under Section 1.1502–20T(i).'' The statement must include the name and employer identification number (E.I.N.) of the subsidiary and of the member(s) that disposed of the subsidiary stock.

(B) *Amendment.* To amend an election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section, the consolidated group must file a statement entitled ''Amendment of Election Under Section 1.1502–20T(i).'' The statement must include the following information—

(*1*) The name and employer identification number (E.I.N.) of the subsidiary and of the member(s) that disposed of the subsidiary stock; and

(*2*) The provision the taxpayer elects to apply to determine allowable loss or basis reduction (described in paragraph (i)(2)(i) or (ii) of this section).

(iv) *Special rule.* If a consolidated group revokes an election made under paragraph (i) of this section, an election described in § 1.1502–20(g) to reattribute losses will not be respected, even if such election was filed with the group's return for the year of the disposition.

(v) This paragraph (i)(6) is applicable on and after August 26, 2004.

* * * * *

■ **Par. 3.** Section § 1.1502–32T(b)(4)(vii)(C) is amended by removing the language ''May 7, 2003'' and adding the language ''August 25, 2004'' each time it appears.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: August 19, 2004.

**Gregory F. Jenner,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 04–19476 Filed 8–25–04; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Parts 40, 41, 44, 45, 46, 70, and 275

**[T.D. TTB–16]**

**RIN 1513–AA20**

## Importation of Tobacco Products and Cigarette Papers and Tubes; Recodification of Regulations; Administrative Changes Due to the Homeland Security Act of 2002 (2000R–546P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) is recodifying its regulations pertaining to the importation of tobacco products and cigarette papers and tubes. We are also making administrative changes to these regulations to reflect TTB's new name and organizational structure resulting from changes made by the Homeland Security Act of 2002. This document does not include any substantive regulatory changes.

**DATES:** This rule is effective on August 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** N. A. Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, telephone 415–271–1254 or e-mail: *nancy.sutton@ttb.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

As a part of its continuing efforts to reorganize chapter I of title 27 of the Code of Federal Regulations (27 CFR chapter I), the Alcohol and Tobacco Tax and Trade Bureau (TTB) is removing all of part 275, Importation of Tobacco Products and Cigarette Papers and Tubes, from subchapter M, Alcohol, Tobacco and Other Excise Taxes, and recodifying it as part 41 in subchapter B, Tobacco. This change merely

improves the organization of chapter I of title 27. The table below shows from which section of part 275 the requirements of part 41 are derived.

In addition, section 1111 of the Homeland Security Act of 2002 (Public Law 107–296, 116 Stat. 2135) divided the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, into two separate agencies, the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice, and TTB which remains in the Department of the Treasury. This reorganization requires us to amend each of the CFR parts under our jurisdiction to reflect our Bureau's new name and organizational structure. This document makes the appropriate administrative, nonsubstantive changes to the newly redesignated part 41.

DERIVATION TABLE FOR PART 41

| The requirements of section | Are derived from section |
|---|---|
| **Subpart A** | |
| 41.1 | 275.1 |
| **Subpart B** | |
| 41.11 | 275.11 |
| **Subpart C** | |
| 41.21 | 275.21 |
| 41.22 | 275.22 |
| 41.23 | 275.23 |
| 41.24 | 275.24 |
| 41.25 | 275.25 |
| 41.26 | 275.26 |
| 41.27 | 275.27 |
| 41.28 | 275.28 |
| 41.29 | 275.29 |
| **Subpart D** | |
| 41.30 | 275.30 |
| 41.31 | 275.31 |
| 41.32 | 275.32 |
| 41.33 | 275.33 |
| 41.34 | 275.34 |
| 41.35 | 275.35 |
| 41.37 | 275.37 |
| 41.38 | 275.38 |
| 41.39 | 275.39 |
| 41.40 | 275.40 |
| 41.41 | 275.41 |
| 41.50 | 275.50 |
| 41.60 | 275.60 |
| 41.62 | 275.62 |
| 41.63 | 275.63 |
| **Subpart E** | |
| 41.71 | 275.71 |
| 41.72 | 275.72 |
| 41.72a | 275.72a |
| 41.72b | 275.72b |
| 41.72c | 275.72c |
| 41.73 | 275.73 |
| 41.74 | 275.74 |

DERIVATION TABLE FOR PART 41—Continued

| The requirements of section | Are derived from section |
|---|---|
| 41.75 | 275.75 |
| **Subpart F** | |
| 41.81 | 275.81 |
| 41.82 | 275.82 |
| 41.83 | 275.83 |
| 41.85 | 275.85 |
| 41.85a | 275.85a |
| 41.86 | 275.86 |
| **Subpart G** | |
| 41.101 | 275.101 |
| 41.105 | 275.105 |
| 41.106 | 275.106 |
| 41.107 | 275.107 |
| 41.108 | 275.108 |
| 41.109 | 275.109 |
| 41.110 | 275.110 |
| 41.111 | 275.111 |
| 41.112 | 275.112 |
| 41.113 | 275.113 |
| 41.114 | 275.114 |
| 41.114a | 275.114a |
| 41.115 | 275.115 |
| 41.115a | 275.115a |
| 41.116 | 275.116 |
| 41.117 | 275.117 |
| 41.118 | 275.118 |
| 41.119 | 275.119 |
| 41.120 | 275.120 |
| 41.121 | 275.121 |
| 41.122 | 275.122 |
| 41.123 | 275.123 |
| 41.124 | 275.124 |
| 41.125 | 275.125 |
| 41.126 | 275.126 |
| 41.127 | 275.127 |
| 41.128 | 275.128 |
| 41.129 | 275.129 |
| 41.135 | 275.135 |
| 41.136 | 275.136 |
| 41.137 | 275.137 |
| 41.138 | 275.138 |
| 41.139 | 275.139 |
| 41.140 | 275.140 |
| 41.141 | 275.141 |
| **Subpart H** | |
| 41.151–41.153 | 275.151–275.153 |
| **Subpart I** | |
| 41.161 | 275.161 |
| 41.162 | 275.162 |
| 41.163 | 275.163 |
| 41.165 | 275.165 |
| 41.170 | 275.170 |
| 41.171 | 275.171 |
| 41.172 | 275.172 |
| 41.173 | 275.173 |
| 41.174 | 275.174 |
| **Subpart J** | |
| 41.181 | 275.181 |
| 41.182 | 275.182 |

DERIVATION TABLE FOR PART 41—Continued

| The requirements of section | Are derived from section |
|---|---|
| 41.183 | 275.183 |
| **Subpart K** | |
| 41.190 | 275.190 |
| 41.191 | 275.191 |
| 41.192 | 275.192 |
| 41.193 | 275.193 |
| 41.194 | 275.194 |
| 41.195 | 275.195 |
| 41.196 | 275.196 |
| 41.197 | 275.197 |
| 41.198 | 275.198 |
| 41.199 | 275.199 |
| 41.200 | 275.200 |
| 41.201 | 275.201 |
| 41.202 | 275.202 |
| 41.203 | 275.203 |
| 41.204 | 275.204 |
| 41.205 | 275.205 |
| 41.206 | 275.206 |
| 41.207 | 275.207 |
| 41.208 | 275.208 |
| **Subpart L** | |
| 41.220 | 275.220 |
| 41.221 | 275.221 |
| 41.222 | 275.222 |
| 41.223 | 275.223 |
| 41.224 | 275.224 |
| 41.225 | 275.225 |
| 41.226 | 275.226 |
| 41.227 | 275.227 |
| 41.228 | 275.228 |

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for this final rule under 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis requirement of this Executive Order.

**Inapplicability of Prior Notice and Comment and Delayed Effective Date Requirements**

Because this final rule merely makes organizational and technical or conforming nonsubstantive amendments to improve the layout of the regulations and to reflect the new name and organizational structure of TTB, no notice of proposed rulemaking and public comment period are required under 5 U.S.C. 553(b)(B). For the same reasons, this final rule is not subject to the delayed effective date requirement of 5 U.S.C. 553(d).

**Drafting Information**

The principal author of this document is N. A. Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

**List of Subjects**

*27 CFR Part 40*

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

*27 CFR Part 41*

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

*27 CFR Part 44*

Aircraft, Armed forces, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

*27 CFR Part 45*

Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

*27 CFR Part 46*

Cigars and cigarettes, Claims, Excise taxes, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

*27 CFR Part 70*

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

*27 CFR Part 275*

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

**Amendments to the Regulations**

■ For the reasons stated in the preamble, TTB amends chapter 1 of title 27 of the Code of Federal Regulations as follows:

## PART 40—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 1. The authority citation for 27 CFR part 40 continues to read as follows:

**Authority:** 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

### § 40.165a [Amended]

■ 2. Amend the first sentence of paragraphs (a)(1), (b)(1) and (b)(3) of § 40.165a by removing the reference to ''parts 275 and 285'' and adding, in its place, a reference to ''part 41''.

### §§ 40.236, 40.357 and 40.452 [Amended]

■ 3. Remove the reference to ''part 275'' and add, in its place, a reference to ''part 41'' in the following places:

■ a. Section 40.236;

■ b. Section 40.357 (a)(1), (b)(1), and (b)(3); and

■ c. Section 40.452.

## PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

■ 4. The authority citation for 27 CFR part 44 continues to read as follows:

**Authority:** 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

### § 44.11 [Amended]

■ 5. Amend the definition of ''Sale price'' in § 44.11 by removing the reference to ''275.39'' and adding, in its place, a reference to ''41.39''.

## PART 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

■ 6. The authority citation for 27 CFR part 45 continues to read as follows:

**Authority:** 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

### § 45.11 [Amended]

■ 7. Amend the definition of ''Sale price'' in § 45.11 by removing the reference to ''275.39'' and adding, in its place, a reference to ''41.39''.

## PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 8. The authority citation for 27 CFR part 46 continues to read as follows:

**Authority:** 18 U.S.C. 2341–2346, 26 U.S.C. 5704, 5708, 5751, 5754, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

### § 46.72 [Amended]

■ 9. Amend the definition of ''Sale price'' in § 46.72 by removing the reference to ''275.39'' and adding, in its place, a reference to ''41.39''.

### § 46.166 [Amended]

■ 10. Amend § 46.166 as follows:

■ a. In paragraph (a), first sentence, remove the reference to ''parts 270 and 275'' and add, in its place, a reference to ''parts 40 and 41''.

■ b. In paragraph (c) remove the reference to ''§ 275.83'' and add, in its place, a reference to ''§ 41.83.''

### § 46.167 [Amended]

■ 11. Amend § 46.167 by removing the reference to ''parts 40 and 275'' each place it appears, and add, in each place, a reference to ''parts 40 and 41''.

### § 46.255 [Amended]

■ 12. Amend paragraph (d) of § 46.255 by removing the reference to ''part 275'' and adding, in its place, a reference to ''part 41''.

## PART 70—PROCEDURE AND ADMINISTRATION

■ 13. The authority citation for 27 CFR part 70 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

### § 70.431 [Amended]

■ 14. Amend § 70.431(b)(3) by removing the reference to ''Part 275'' and adding, in its place, a reference to ''Part 41''.

### § 70.461 [Amended]

■ 15. Amend § 70.461 by removing the reference to ''part 275'' and adding, in its place, a reference to ''part 41''.

## PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 16. The authority citation for 27 CFR part 275 continues to read as follows:

**Authority:** 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

## PART 275—[REDESIGNATED AS PART 41]

■ 17. Transfer 27 CFR part 275 from chapter I, subchapter M, to chapter I, subchapter B, and redesignate as 27 CFR part 41.

## PART 41—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 18. Revise the authority citation for the newly redesignated 27 CFR part 41 to read as follows:

**Authority:** 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

### § 41.11 [Amended]

■ 19. Amend § 41.11 as follows:

■ a. Add, in alphabetical order, a definition of ''Administrator'' to read as set forth below:

■ b. Remove the definition of ''Appropriate ATF officer'' and add, in its place, the definition of ''Appropriate TTB officer'' to read as set forth below:

■ c. Remove the definitions of ''Associate Director (Compliance Operations),'' ''ATF,'' ''ATF officer,'' and ''Chief, Puerto Rico Operations.''

■ d. In the definition of ''Computation or computed'' remove the reference to ''an ATF officer'' and add, in its place, a reference to ''the appropriate TTB officer''.

■ e. Remove the definitions of ''Director'' and ''District director.''

■ f. In paragraph (3)(v) of the definition of ''Records'' remove the reference to ''ATF'' each place it appears, and add, in each place, a reference to ''TTB''.

■ g. Remove the definitions of ''Region,'' and ''Regional Director (compliance).''

■ h. In the definition of ''Sale price'', remove the reference to ''§ 275.39'' and add, in its place, a reference to ''§ 41.39''.

The additions to §41.11 read as follows:

### § 41.11 Meaning of terms.

* * * * *

*Administrator.* The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

*Appropriate TTB officer.* An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.41, Delegation of the Administrator's Authorities in 27 CFR Part 41, Importation of Tobacco Products and Cigarette Papers and Tubes.

* * * * *

### § 41.21 [Amended]

■ 20. Amend § 41.21 as follows:

■ a. In paragraph (a) remove the word ''Director'' and add, in its place, the word ''Administrator''.

■ b. Revise paragraph (b) to read as follows:

### § 41.21 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov/*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

### §§ 41.22, 41.23, 41.24, 41.25, 41.26 and 41.27 [Amended]

■ 21. Amend the sections listed above as follows:

| Amend: | By removing the reference to: | And replacing it with: |
|---|---|---|
| § 41.22 | any ATF officer | any appropriate TTB officer. |
| § 41.23, section heading | ATF | TTB. |
| § 41.23 | any ATF officer | any appropriate TTB officer. |
| § 41.23 (two times) | any ATF officer | any appropriate TTB officer. |
| § 41.24 | any ATF officer | any appropriate TTB officer. |
| § 41.25 | ATF | TTB. |
| § 41.26, introductory text (two times) | Director | appropriate TTB officer. |
| § 41.26, concluding text | to the regional director (compliance) for transmittal to the Director. | to the appropriate TTB officer. |
| § 41.26, concluding text (three times) | Director | appropriate TTB officer. |
| § 41.27, introductory text | Director | appropriate TTB officer. |
| § 41.27, concluding text | judgment of the Director | judgment of the appropriate TTB Officer. |
| § 41.27, concluding text | to the regional director (compliance) for transmittal to the Director. | to the appropriate TTB officer. |
| § 41.27, concluding text | the Director under this section | the appropriate TTB officer under this section. |

### § 41.29 [Amended]

■ 22. Revise § 41.29 to read as follows:

### § 41.29 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.41, Delegation of the Administrator's Authorities in 27 CFR Part 41, Importation of Tobacco Products and Cigarette Papers and Tubes. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov/*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

**§§ 41.31, 41.40, 41.63, 41.71, 41.72c, 41.73, 41.74, 41.75, 41.81, 41.82, 41.83, 41.85, 41.85a, 41.86, 41.101, 41.105, 41.106, 41.109, 41.110, 41.111, 41.112, 41.113, 41.114, 41.114a, 41.115, 41.115a, 41.116, 41.121, 41.122, 41.123, 41.124, 41.125, 41.126, 41.127, 41.128, 41.129, 41.161, 41.163, 41.165, 41.170, 41.171, 41.172, 41.173, 41.174, 41.181, 41.182, 41.190, 41.191, 41.192, 41.193, 41.194, 41.195, 41.196, 41.197, 41.198, 41.199, 41.200, 41.201, 41.202, 41.203, 41.206, 41.207, 41.208, 41.220, 41.221, 41.222, 41.223, 41.224, 41.225, 41.226, 41.227, and 41.228 [Amended]**

■ 23. Amend the sections listed above as follows:

| Amend | By removing the reference to: | And replacing it with: |
|---|---|---|
| § 41.31(b) | § 275.39 | § 41.39 |
| § 41.40 | § 275.11 | § 41.11 |
| § 41.63(c) | § 275.11 | § 41.11 |
| § 41.71 | § 275.75 | § 41.75 |
| § 41.72c(b) | § 275.72b(b) | § 41.72b(b) |
| § 41.72c(c) | § 275.72b(a) | § 41.72b(a) |
| § 41.73, introductory text | § 275.75 | § 41.75 |
| § 41.74 | § 275.75 | § 41.75 |
| § 41.75 | § 275.50 | § 41.50 |
| § 41.81(a) | section 275.82 | § 41.82 |
| § 41.81(b) | §§ 275.85 and 275.85a | §§ 41.85 and 41.85a |
| § 41.81(c)(4)(iv) | § 275.31 | § 41.31 |
| § 41.81(d)(1) | §§ 275.85, 275.85a, or 275.135 | §§ 41.85, 41.85a, or 41.135 |
| § 41.81(d)(3) | § 275.151 | § 41.151 |
| § 41.82 (i) | § 275.83 | § 41.83 |
| § 41.82(j) | § 275.83 | § 41.83 |
| § 41.83, introductory text | § 275.82(b) and (c) | § 41.82(b) and (c) |
| § 41.85(a) | § 275.86 | § 41.86 |
| § 41.85(a) (two times) | ATF | TTB |
| § 41.85a(c) | § 275.86 | § 41.86 |
| § 41.86(a) | §§ 275.85 or 275.85a | §§ 41.85 or 41.85a |
| § 41.86(a) (two times) | ATF | TTB |
| § 41.86(b) (six times) | ATF | TTB |
| § 41.86(c) (three times) | ATF | TTB |
| § 41.86(d) (four times) | ATF | TTB |
| § 41.101(c) | § 275.105 | § 41.105 |
| § 41.105 | ATF | TTB |
| § 41.106(a)(3) | 275.30 through 275.35 | §§ 41.30 through 41.35 |
| § 41.106(a)(11) | ATF | TTB |
| § 41.106(b) (two times) | ATF | TTB |
| § 41.109 | regional director (compliance) | appropriate TTB officer |
| § 41.109 | § 275.112 | § 41.112 |
| § 41.110(c) | 275.30 through 275.35 | §§ 41.30 through 41.35 |
| § 41.111(b) | ATF | TTB |
| § 41.112 (two times) | ATF | TTB |
| § 41.112 | Chief, Puerto Rico Operations | appropriate TTB officer |
| § 41.112 | § 275.114 | § 41.114 |
| § 41.112 | Regional Director (compliance), Bureau of Alcohol, Tobacco and Firearms, Atlanta, GA. | appropriate TTB officer |
| § 41.113 | § 275.114 | § 41.114 |
| § 41.114(a) | § 275.115 | § 41.115 |
| § 41.114(a) | § 275.115a | § 41.115a |
| § 41.114(b)(2) | § 275.115a | § 41.115a |
| § 41.114(c) | office of the Chief, Puerto Rico Operations | appropriate TTB officer |
| § 41.114a(a) | § 275.114 | § 41.114 |
| § 41.114a(a) | regional director (compliance) | appropriate TTB officer |
| § 41.114a(a) | 27 CFR 275.114 | 27 CFR 41.114 |
| § 41.114a(a) | § 275.121 | § 41.121 |
| § 41.114a(b) | § 275.114 | § 41.114 |
| § 41.114a(b) | § 275.116 | § 41.116 |
| § 41.114a(b) | § 275.121 | § 41.121 |
| § 41.114a(c) | regional director (compliance) | appropriate TTB officer |
| § 41.115 | § 275.115a | § 41.115a |
| § 41.115 | Chief, Puerto Rico Operations | appropriate TTB officer |
| § 41.115a(a)(1) | § 275.115 | § 41.115 |

| Amend | By removing the reference to: | And replacing it with: |
|---|---|---|
| § 41.115a(b)(1) | the regional director (compliance), for each region in which taxes are paid. | the appropriate TTB officer |
| § 41.115a(b)(2) | § 275.105 | § 41.105 |
| § 41.115a(b)(2) | § 275.114 | § 41.114 |
| § 41.115a(b)(3) | § 275.115 | § 41.115 |
| § 41.115a(b)(3) | regional director (compliance) | appropriate TTB officer |
| § 41.115a(c)(1) | Chief, Puerto Rico Operations | appropriate TTB officer |
| § 41.115a(e) (two times) | ATF | TTB |
| § 41.116 | regional director (compliance) | appropriate TTB officer |
| § 41.121(b) | § 275.111 | § 41.111 |
| § 41.121(b) | ATF-prescribed document | TTB-prescribed document |
| § 41.122 | § 275.121 | § 41.121 |
| § 41.122 | § 275.123 | § 41.123 |
| § 41.123 (two times) | regional director (compliance) | appropriate TTB officer |
| § 41.123 | § 275.121 | § 41.121 |
| § 41.124 | § 275.114a | § 41.114a |
| § 41.125 (three times) | regional director (compliance) | appropriate TTB officer |
| § 41.125 | § 275.136 | § 41.136 |
| § 41.125 | any ATF officer | the appropriate TTB officer |
| § 41.126 (four times) | regional director (compliance) | appropriate TTB officer |
| § 41.126 | § 275.127 | § 41.127 |
| § 41.127 (three times) | regional director (compliance) | appropriate TTB officer |
| § 41.127 | § 275.128 | § 41.128 |
| § 41.128 | § 275.127 | § 41.127 |
| § 41.129 | § 275.120 | § 41.120 |
| § 41.129 (three times) | regional director (compliance) | appropriate TTB officer |
| § 41.161 | satisfaction of the regional director (compliance). | satisfaction of the appropriate TTB officer |
| § 41.161 | filed with the regional director (compliance) for the region in which the tax or liability was assessed. | filed with the appropriate TTB officer |
| § 41.163 | satisfactory to the regional director (compliance). | satisfactory to the appropriate TTB officer |
| § 41.163 | § 275.165 | § 41.165 |
| § 41.163 | §§ 275.170 and 275.171 or §§ 275.172 and 275.173. | §§ 41.170 and 41.171 or §§ 41.172 and 41.173 |
| § 41.163 | regional director (compliance) for the region in which the tax was paid, or, where the tax was paid in more than one region, with the regional director (compliance) for any one of the regions in which the tax was paid. | appropriate TTB officer |
| § 41.165 | § 275.163 | § 41.163 |
| § 41.165 | regional director (compliance) | appropriate TTB officer |
| § 41.170, section heading | ATF | TTB |
| § 41.170(a) | § 275.163 | § 41.163 |
| § 41.170(a) | ATF | TTB |
| § 41.170(a) | regional director (compliance) for the region in which the tobacco products and cigarette papers and tubes are assembled. | appropriate TTB officer |
| § 41.170(b) | § 275.22 | § 41.22 |
| § 41.170(b) (two times) | ATF | TTB |
| § 41.171, section heading | regional director (compliance) | appropriate TTB officer |
| § 41.171 | regional director (compliance) may assign an ATF officer to. | appropriate TTB officer may |
| § 41.171 | regional director (compliance) may authorize | appropriate TTB officer may authorize |
| § 41.172(a) | § 275.163 | § 41.163 |
| § 41.172(a) | regional director (compliance) for the region in which the tobacco products and cigarette papers and tubes are assembled. | appropriate TTB officer |
| § 41.172(b) | § 275.22 | § 41.22 |
| § 41.172(b) (two times) | ATF | TTB |
| § 41.173, section heading | regional director (compliance) | appropriate TTB officer |
| § 41.173 | regional director (compliance) may assign an ATF officer to. | appropriate TTB to officer may |
| § 41.173 | regional director (compliance) may authorize | appropriate TTB officer may authorize |
| § 41.174 | an ATF officer | the appropriate TTB officer |
| § 41.174 | The ATF officer | The appropriate TTB officer |
| § 41.181(a) | § 275.39 | § 41.39 |
| § 41.181(c) | § 275.81 | § 41.81 |
| § 41.181(d) | ATF | TTB |
| § 41.182 | § 275.181 | § 41.181 |
| § 41.182 | regional director (compliance) | appropriate TTB officer |
| § 41.182 | any ATF officer | the appropriate TTB officer |
| § 41.182 | § 275.22 | § 41.22 |

| Amend | By removing the reference to: | And replacing it with: |
|---|---|---|
| § 41.190 | § 275.50 | § 41.50 |
| § 41.191 | § 275.192 | § 41.192 |
| § 41.191 | § 275.11 | § 41.11 |
| § 41.191 | ATF | TTB |
| § 41.192(b) (two times) | ATF | TTB |
| § 41.193 | § 275.191 | § 41.191 |
| § 41.193 | ATF | TTB |
| § 41.194 | § 275.191 | § 41.191 |
| § 41.194 | ATF | TTB |
| § 41.195 | § 275.191 | § 41.191 |
| § 41.196 (three times) | ATF | TTB |
| § 41.196 | § 275.194 | § 41.194 |
| § 41.197 (three times) | ATF | TTB |
| § 41.198 | ATF | TTB |
| § 41.199 (three times) | ATF | TTB |
| § 41.200 (two times) | ATF | TTB |
| § 41.201(a) | ATF | TTB |
| § 41.201(b) | § 275.192 | § 41.192 |
| § 41.202 (two times) | ATF | TTB |
| § 41.203 | ATF | TTB |
| § 41.206(a) | ATF | TTB |
| § 41.206(d) | § 275.224 | § 41.224 |
| § 41.206(d) | § 275.226 | § 41.226 |
| § 41.207 (two times) | ATF | TTB |
| § 41.208(a) (two times) | ATF | TTB |
| § 41.208(b) | ATF | TTB |
| § 41.220 | ATF | TTB |
| § 41.221 | ATF | TTB |
| § 41.221 | § 275.195 | § 41.195 |
| § 41.222 | ATF | TTB |
| § 41.223 | ATF | TTB |
| § 41.224 | ATF | TTB |
| § 41.224 | § 275.205 | § 41.205 |
| § 41.224 | § 275.206 | § 41.206 |
| § 41.225 (two times) | ATF | TTB |
| § 41.225 | § 275.226 | § 41.226 |
| § 41.225 | § 275.196 | § 41.196 |
| § 41.226 | ATF | TTB |
| § 41.226 | § 275.206 | § 41.206 |
| § 41.227 | ATF | TTB |
| § 41.228 | ATF | TTB |

Signed: July 6, 2004.

**Arthur J. Libertucci,**

*Administrator.*

Approved: August 2, 2004.

**Timothy E. Skud,**

*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

[FR Doc. 04–19418 Filed 8–25–04; 8:45 am]

**BILLING CODE 4810–31–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[R05–OAR–2004–IN–0003; FRL–7806–5]**

## Approval and Promulgation of Implementation Plans Indiana: Revised Mobile Source Inventories and Motor Vehicle Emissions Budgets for 2005 and 2007 Using MOBILE6

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving Indiana's August 6, 2004, submittal of revised mobile emission inventories and 2005 and 2007 motor vehicle emissions budgets (MVEBs) which have been developed using MOBILE6, an updated model for calculating mobile emissions of ozone precursors. These inventories and associated motor vehicle emissions budgets are part of the 1-hour ozone attainment plan approved for the Northwest Indiana area. The Northwest Indiana area consists of Lake and Porter Counties in Indiana. The State's submittal meets a commitment by the State of Indiana to revise and resubmit the MVEBs using MOBILE6 methods within two years following EPA's release of MOBILE6, provided that transportation conformity is not determined without adequate MOBILE6-based MVEBs during the second year. The lack of approved motor vehicle emissions budgets has resulted in an administrative freeze on transportation conformity in this area. The approval of these budgets will allow transportation conformity determinations to be made in Northwest Indiana.

**DATES:** This ''direct final'' rule is effective on October 12, 2004, unless EPA receives adverse written comments by September 27, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit comments, identified by Docket ID No. R05–OAR–2004–IN–0003 by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

E-mail: *bortzer.jay@epa.gov.*

Fax: (312) 886–5824.

*Mail:* You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief,

Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. R05–OAR–2004–IN–0003. 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* Web site 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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

*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.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Patricia Morris, Environmental Scientist, at (312) 353–8656 before visiting the Region 5 office.) This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Patricia Morris, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656. *morris.patricia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

I. General Information
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B. How Can I Get Copies of This Document and Other Related Information?
C. How and To Whom Do I Submit Comments?
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III. What Action Is EPA Taking Today?
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V. What is Transportation Conformity?
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## I. General Information

### *A. Does This Action Apply To Me?*

This action is rulemaking on a non-regulatory planning document intended to ensure the continued progress toward good air quality in the Northwest Indiana (Lake and Porter Counties) Area. This action will allow transportation planning to proceed in Northwest Indiana.

### *B. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an electronic public rulemaking file available for inspection on EDOCKET and a hard copy file which is available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under Docket ID No. R05–OAR–2004–IN–0003. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### *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 rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket ''R05–OAR–2004–IN–0003'' 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.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

## II. What Is the Background for This Action?

In November of 1999, EPA issued two memoranda [1] to articulate its policy regarding states that incorporated MOBILE5-based interim Tier 2 standard [2] benefits into their State Implementation Plans (SIPs) and MVEBs. Although these memoranda primarily targeted certain serious and severe ozone nonattainment areas, EPA has implemented this policy in all other areas that have made use of federal Tier 2 benefits in air quality plans from EPA's April 2000 MOBILE5 guidance, ''MOBILE5 Information Sheet #8: Tier 2 Benefits Using MOBILE5.'' All states whose attainment demonstrations or maintenance plans include interim MOBILE5-based estimates of the Tier 2 standards were required to make a commitment to revise and resubmit their MVEBs within either one or two years of the final release of MOBILE6 in order to gain SIP approval.

EPA officially released the MOBILE6 motor vehicle emissions factor model on January 29, 2002 (67 FR 4254). Thus, the effective date of that **Federal Register** action constituted the start of the two-year time period in which Indiana was required to revise the maintenance plan SIPs using the MOBILE6 model.

MOBILE5b, as released, did not allow the user to estimate the emission reduction credits for the Tier 2/Low Sulfur rule. This situation existed since the Tier 2 rule was promulgated after the release of MOBILE5b. Therefore, in order to allow areas that wanted to claim emission reduction credit for the Tier 2/Low Sulfur rule to estimate the benefits, EPA provided a method to estimate those reductions. This MOBILE5b approximation methodology represented the information available for use in on-road mobile source modeling at that time when MOBILE5b was the approved model. EPA recognized these approximations could change as more data are analyzed and incorporated into the next version of the MOBILE model, MOBILE6. EPA required areas that used the MOBILE5b approximation method to resubmit MVEBs recalculated with MOBILE6. Specifically, EPA established a policy that MVEBs would not be approved as being adequate for purposes of conformity unless the SIP also included an enforceable commitment to revise and resubmit the MVEBs using MOBILE6 methods within one year after the EPA released MOBILE6 or, alternatively, within two years following the release of MOBILE6, provided that transportation conformity is not determined in the area without adequate MOBILE6-based MVEBs during the second year. Based on this policy, EPA required Indiana to update the MVEBs in the 1-hour ozone attainment demonstration for Northwest Indiana within two years after the release of MOBILE6. In addition, any new conformity analysis in the area cannot be found to conform during the second year until MVEBs based on MOBILE6 calculations are found adequate (November 13, 2001, 66 FR 56944). For a more detailed explanation of EPA's rationale for this policy, please refer to the January 18, 2002, ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity'' *(http://www.epa.gov/otaq/models/mobile6/m6policy.pdf)*.

## III. What Action Is EPA Taking Today?

EPA is approving revisions to the Indiana SIP submitted by the Indiana Department of Environmental Management (IDEM). The SIP revision request was originally submitted on July 2, 2004, with a request to parallel process the draft revision. The state public comment period ended on July 30, 2004, and IDEM submitted the final SIP revision request on August 6, 2004. The State's revisions update the MVEBs for the years 2005 and 2007 and also update the projected mobile source emissions (upon which the MVEBs are based) using MOBILE6 for Lake and Porter Counties in Indiana, which are part of the Chicago 1-hour severe ozone nonattainment area. These revisions meet the requirements established in the final approval of the attainment demonstration (November 13, 2001, 66 FR 56944). These revisions also meet the criteria in the January 18, 2002, Guidance document, ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity.''

## IV. What Changes Were Made to the Northwest Indiana 1-Hour Ozone MVEBs?

Indiana revised MVEBs and mobile source emissions using MOBILE6.2, the current version of MOBILE6, and using the latest population and transportation model updates. The revised 2005 MVEB for the Lake and Porter County area is 15.18 tons per summer day (tpd) for Volatile Organic Compounds (VOC). The revised 2007 MVEBs for the Lake and Porter County area are 12.37 tpd VOC and 63.33 tpd for Nitrogen Oxides ($NO_X$) (Please refer to the table below for details.)

Table 1 below summarizes the revised motor vehicle emissions inventories for VOC for the Lake and Porter County area in pounds (lbs) per summer day. These revised inventories were developed using the latest planning assumptions, including vehicle registration data, vehicle miles traveled (VMT), speeds, fleet mix, and SIP emission control measures. These inventories meet the Rate of Progress (ROP) targets for the Lake and Porter County area. Indiana was required to reduce VOC emissions by nine percent between 2002 to 2005. In the original ROP Plan, Indiana had additional emission reductions above and beyond what was required. The approved ROP Plan had an extra reduction of 7,852 lbs. per summer day. The extra creditable reductions were primarily from the shutdown of certain steel operations. The Indiana ROP Plan was approved as part of the attainment demonstration approval on November 13, 2001, (66 FR 56944).

NORTHWEST INDIANA ANTHROPOGENIC EMISSIONS

| State | Source category | VOC 1990 | VOC 2005 | VOC 2007 |
|---|---|---|---|---|
| Indiana | Point | 350,771 | 98,560 | 99,579 |
| | Area | 83,821 | 65,669 | 66,595 |
| | Mobile | 71,560 | 30,351 | 24,738 |
| | Nonroad | 23,367 | 16,611 | 13,326 |

[1] Memoranda, ''Guidance on Motor Vehicle Emissions Budgets in 1-Hour Ozone Attainment Demonstrations,'' issued November 3, 1999, and ''1-Hour Ozone Attainment Demonstrations and Tier2/Sulfur Rulemaking,'' issued November 8, 1999. Copies of these memoranda are on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*.

[2] The final rule on Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements (''Tier 2 standards'') for passenger cars, light trucks, and larger passenger vehicles was published on February 10, 2000 (65 FR 6698).

NORTHWEST INDIANA ANTHROPOGENIC EMISSIONS—Continued

| State | Source category | VOC 1990 | VOC 2005 | VOC 2007 |
|---|---|---|---|---|
| Total | | 529,519 | 211,191 | 204,238 |

The Indiana submittal also addresses the 6% ROP emission reduction needed for the years 2005 to 2007. Again, Indiana had additional VOC emissions in the originally approved ROP Plan. These additional emissions are above and beyond the 3% contingency requirements which were also met and approved. Indiana has used the additional, excess emissions reductions by allocating them to the mobile source sector for the emissions budgets. By using the excess emission reductions, Indiana no longer has additional excess ROP emissions in the approved ROP Plan.

IDEM and EPA also reviewed planning assumptions for the point, area, and nonroad source categories to ensure there have been no major changes since approval of the attainment demonstration. The emissions for point, area, and nonroad source categories are shown in Table 1, in addition to the mobile source emissions.

EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity'' [3] and ''Clarification of Policy Guidance for MOBILE6 in Mid-course Review Areas.'' [4]

Consistent with this policy guidance, Indiana's August 6, 2004, submittal includes urban airshed modeling results to show that its 1-Hour Ozone Attainment Demonstration Plan continues to demonstrate attainment using revised MOBILE6 inventories for the Northwest Indiana area and the entire Lake Michigan area. The State's methodology for the urban airshed modeling consisted of modeling the critical episode from 1995 with the increased emissions in Northwest Indiana to determine if attainment will still be predicted by the established 2007 attainment date. The emissions were increased by a 5% margin to assure that, even with extra emissions, the area would demonstrate attainment. The modeling showed that the regional strategy met the three benchmarks in EPA's 1-hour attainment test (''Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS'', June 1996). The benchmarks set limits on the number of modeled exceedance days. All three of the benchmarks were met by the modeling that considered increased emissions.

Indiana's August 6, 2004 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment date of November 15, 2007, for the Northwest Indiana area.

## V. What Is Transportation Conformity?

Transportation conformity means that the level of emissions from the transportation sector (*i.e.*, cars, trucks and buses) must be consistent with the requirements in the SIP to attain and maintain the National Ambient Air Quality Standard (NAAQS). The Clean Air Act, in section 176(c), requires conformity of transportation plans, programs and projects to a SIP's purpose of attaining and maintaining the NAAQS. On November 24, 1993, EPA published a final rule establishing criteria and procedures for determining if transportation plans, programs and projects funded or approved under Title 23 United States Code or the Federal Transit Act conform to the SIP. EPA revised the Transportation Conformity Rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and codified the revisions under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 United States Code or the Federal Transit Laws (62 FR 43780). The transportation conformity rules require the comparison of an ozone nonattainment area to the actual projected emissions from cars, trucks and buses on the highway network, to the MVEB established by the SIP. The Northwest Indiana area has an approved attainment demonstration. EPA's approval of the attainment demonstration on November 13, 2001, (66 FR 56944) established interim MVEBs for transportation conformity purposes. These SIP revisions revise the MVEBs and reestablish the MVEBs for transportation conformity purposes.

## VI. What Is a MVEB?

A MVEB is the projected level of controlled emissions from the transportation sector (mobile sources) that is estimated in the SIP. The SIP controls emissions through regulations, for example, on fuels and exhaust levels for cars. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB. The transportation conformity rule allows the MVEB to be changed as long as the total level of emissions from all sources remains below the attainment level of emissions.

## VII. How Does This Action Change Implementation of Transportation Conformity for the Northwest Indiana Area?

In today's action, EPA is approving revisions to the 2005 and 2007 MVEBs for the Indiana portion of the Chicago 1-hour ozone nonattainment area. The revised 2005 MVEB for the Northwest Indiana area is 15.18 tpd for VOC. The revised 2007 MVEBs for the Lake and Porter County area are 12.37 tpd for VOC and 63.33 tpd for $NO_X$.

As a result of these findings, the Northwest Indiana area must use the revised 2005 and 2007 MVEBs for future conformity determinations effective on the date of this action. EPA's approval of the MVEBs removes the administrative freeze on transportation conformity on the area and allows the area to demonstrate conformity.

## VIII. What Is the Action?

EPA is approving Indiana's SIP revisions because they meet all of the requirements of section 110 of the Clean Air Act, as interpreted by EPA policy and guidance. Additionally, these SIP revisions meet the applicable requirements of the Transportation Conformity Rule.

[3] Memorandum, ''Policy Guidance on the Use of MOBILE6 for SIP development and Transportation Conformity,'' issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

[4] Memorandum, ''Clarification of Policy Guidance for MOBILE6 SIPs in Mid-course Review Areas,'' issued February 12, 2003. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

## IX. Did Indiana Hold a Public Hearing?

Indiana held a public hearing on July 28, 2004 in Merrillville, Indiana. The public comment period extended until July 30, 2004. No comments were received during the comment period including at the public hearing.

## X. Statutory and Executive Order Reviews

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.

*Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

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).

*Regulatory Flexibility Act*

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.*).

*Unfunded Mandates Reform Act*

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).

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

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).

*Executive Order 13132: Federalism*

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.

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

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.

*National Technology Transfer Advancement Act*

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.

*Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*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).

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 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, Intergovernmental relations, Nitrogen dioxide, Volatile organic compounds, Ozone.

Dated: August 12, 2004.

**Steve Rothblatt,**

*Acting Regional Administrator, Region 5.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations 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 P—Indiana

■ 2. Section 52.777 is amended by adding paragraph (aa) to read as follows:

### § 52.777 Control strategy: photochemical oxidants (hydrocarbons).

* * * * *

(aa) Approval—On August 6, 2004, Indiana submitted a revision to the 1-hour ozone attainment plan for Lake and Porter Counties. The revision consists of new motor vehicle emission estimates and new MOBILE6 based motor vehicle emissions budgets. The motor vehicle emissions budget for volatile organic compounds (VOCs) for Lake and Porter Counties, Indiana for the 2005 interim Rate of Progress year is now 15.18 tons per summer day (tpd). The 2007 motor vehicle emissions budgets for the Lake and Porter Counties, Indiana are now 12.37 tpd VOC and 63.33 tpd oxides of nitrogen.

[FR Doc. 04–19434 Filed 8–25–04; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA 287–0445; FRL–7804–2]**

## Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of revisions to the Antelope Valley Air Quality Management District's (AVAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on June 21, 2004 and concerns volatile organic compound (VOC) emissions from architectural coatings. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action approves a local rule that regulates these emission sources.

**DATES:** *Effective Date:* This rule is effective on September 27, 2004.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Antelope Valley Air Quality Management District, 43301 Division Street, Suite 206, Lancaster, CA 93535–4649.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Francisco Dónez, EPA Region IX, (415) 972–3956, *Dónez.Francisco@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

### I. Proposed Action

On June 21, 2004 (69 FR 34323), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| AVAQMD | 1113 | Architectural Coatings | 03/18/03 | 06/05/03 |

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. This rule was modeled on the California Air Resources Board's (CARB) Suggested Control Measure for Architectural Coatings (SCM), and contains many of the same deficiencies as that measure. These deficiencies relate to the averaging provisions incorporated into the rule. The deficiencies in AVAQMD Rule 1113 include the following:

1. Because emissions from coatings sold under the sell-through provisions cannot be distinguished (based on the information explicitly required to be maintained under the rule) from emissions from coatings sold under an averaging program, the enforceability of the rule may be compromised by manufacturers claiming that a certain portion of emissions from coatings sold under the sell-through provision should be excluded from averaged emissions.

2. The requirement that manufacturers describe the records being used to calculate coating sales under averaging programs is not sufficiently specific and represents executive officer discretion.

3. The rule's language regarding how violations of the averaging compliance option shall be determined is ambiguous.

4. The rule allows manufacturers to average coatings based on statewide or district-specific data, which makes enforceability more difficult and conflicts with other rule provisions which imply that averaging will only be implemented by CARB and conducted on a statewide basis.

5. The rule grants the Executive Officer of CARB authority to approve or disapprove initial averaging programs, program renewals, program modifications, and program terminations. This raises jurisdictional issues and creates enforceability problems, since CARB has not been granted authority by the state Legislature under the California Health and Safety Code to regulate architectural coatings.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. We received no comments during this period.

### III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. However, sanctions will not be imposed under section 179 of the Act according to 40 CFR 52.31, even if EPA does not approve subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action because, according to specific language incorporated into the rule, the deficient provisions will expire in January 2005, in advance of the end of the 18-month period allowed to correct the deficiencies. Similarly, EPA will not promulgate a Federal implementation plan (FIP) under section 110(c) if subsequent SIP revisions that correct the rule deficiencies are not approved within 24 months. Note that the submitted rule has been adopted by the Antelope Valley Air Quality Management District, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

## IV. Statutory and Executive Order Reviews

*A. Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

*B. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*D. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

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

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act

(NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*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 September 27, 2004.

*K. 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 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 3, 2004.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

■ Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(316)(i)(F) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(316) * * *

(i) * * *

(F) Antelope Valley Air Quality Management District.

(*1*) Rule 1113, adopted on March 18, 2003.

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[FR Doc. 04–19523 Filed 8–25–04; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–2004–0195; FRL–7371–2]**

## Pyrimethanil; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances as follows: For residues of pyrimethanil, 4,6-dimethyl-*N*-phenyl-2-pyrimidinamine, in or on almond; almond, hulls; apple, wet pomace; banana; citrus oil; fruit, citrus, group 10 (post-harvest); fruit, pome, group 11 (pre-harvest and post-harvest); fruit, stone (except cherry), group 12; grape; grape, raisin; onion, dry bulb; onion, green; pistachio; strawberry; tomato; and vegetable, tuberous and corm, subgroup 1C; for residues of pyrimethanil and its metabolite, 4-[4,6-dimethyl-2-pyrimidinyl)amino]phenol in or on cattle, fat; cattle, kidney; cattle, meat; cattle meat-by-products (except kidney); goat, fat; goat, kidney; goat, meat; goat meat-by-products (except kidney); horse, fat; horse, kidney; horse, meat; horse, meat-by-products (except kidney); sheep, fat; sheep, kidney; sheep, meat; and sheep, meat-by-products (except kidney); and for residues of pyrimethanil and its metabolite 4,6-dimethyl-2-(phenylamino)-5-pyrimidinol in milk. Bayer Crop Science and Janssen Pharmaceutica, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective August 26, 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 VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP–2004–0195. 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), 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.

**FOR FURTHER INFORMATION CONTACT:** Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@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/*. 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 February 14, 2003 (68 FR 7548) (FRL–7289–1), and March 5, 2003 (68 FR 10458) (FRL–7291–2), 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 2F6480, 2F6439, and 9E6054) by Janssen Pharmaceutica Inc., Plant and Material Protection Division, 1125 Trenton-Harbouton Road, Titusville, NJ 08560, and Bayer Crop Science, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. These notices included a summary of the petitions prepared by Janseen Pharmaceutica Inc., and Bayer Crop Science, the registrants. There were no comments received in response to these notices of filing.

The petitions requested that 40 CFR 180.518 be amended by establishing tolerances for residues of the fungicide pyrimethanil, 4,6-dimethyl-*N*-phenyl-2-pyrimidinamine, in or on citrus fruits (calamondin, citrus citron, citrus hybrids, grapefruit, kumquat, lemon, lime, mandarin, sour and sweet oranges, pummelo and satsuma mandarin) at 6 parts per million (ppm); pome fruit (apples, pears, oriental pears, crabapples, loquats, mayhaws, and quince) wet pomace at 12 ppm; and pome fruit (apples, pears, oriental pears, crabapples, loquats, mayhaws, and quince) at 3 ppm 2F6480; tree nut, nutmeat, group at 0.25 ppm; tree nut, hulls, group at 12 ppm; fruit, pome, group at 0.20 ppm; apple, wet pomace at 0.75 ppm; fruit, stone, group at 3.0 ppm; grape at 3.0 ppm; grape, dry pomace at 20 ppm,; grape, wet pomace at 7.0 ppm; grape, raisen waste at 50 ppm; grape, raisin at 5.0 ppm; vegetable, bulb, group at 2.0 ppm; vegetable, tuberous and corm, subgroup at 0.05 ppm; strawberry at 3.0 ppm; tomato at 0.50 ppm; wheat, rotational at 0.05 ppm; cattle, meat at 0.1 ppm; cattle, meat-by-products at 0.1 ppm; and milk at 0.03 ppm 2F6439;, and banana at 0.10 ppm 9E6054.

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

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

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of 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 as follows: (1) For residues of pyrimethanil on almond at 0.20 ppm; almond, hulls at 12 ppm; apple, wet pomace at 12 ppm; banana at 0.10 ppm; citrus oil at 150 ppm; fruit, citrus, group 10 (post-harvest) at 10 ppm; fruit, pome, group 11 (pre-harvest and post-harvest) at 3.0 ppm; fruit, stone (except cherry), group 12 at 3.0 ppm; grape at 5.0 ppm; grape, raisin at 8.0 ppm; onion, dry bulb at 0.10 ppm; onion, green at 2.0 ppm; pistachio at 0.20 ppm; strawberry at 3.0 ppm; tomato at 0.50 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.05 ppm; (2) for residues of pyrimethanil and its metabolite, 4-[4,6-dimethyl-2-pyrimidinyl)amino]phenol on cattle, fat at 0.01 ppm; cattle, kidney at 0.30 ppm; cattle, meat at 0.01 ppm; cattle, meat-by-products (except kidney) at 0.01 ppm; goat, fat at 0.01 ppm; goat, kidney at 0.30 ppm; goat, meat at 0.01 ppm; goat, meat-by-products (except kidney) at 0.01 ppm; horse, fat at 0.01 ppm; horse, kidney at 0.30 ppm; horse, meat at 0.01 ppm; horse, meat-by-products (except kidney) at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, kidney at 0.30 ppm; sheep, meat at 0.01 ppm; and sheep, meat-by-products (except kidney) at 0.01 ppm; and (3) for residues of pyrimethanil and its metabolite, 4,[6-dimethyl-2-(phenyl]amino)-5-pyrimidinol in milk at 0.03 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 pyrimethanil are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

| Guideline No. | Study Type | Results |
|---|---|---|
| 870.3100 | 90–Day oral toxicity-rodents (rat) | NOAEL = 54.5 milligrams/kilogram/day (mg/kg/day) male (M), 66.7 mg/kg/day female (F)<br>LOAEL = 529.1 mg/kg/day M, 625.9 mg/kg/day F decreased body weights (20%), body weight gain (30%), food consumption, brown urine, increased urinary protein; decreased absolute heart, adrenal, spleen, thymus weights; increased relative liver kidney, gonad weights, liver, thyroid hypertrophy |
| 870.3100 | 90–Day oral toxicity-rodents (mouse) | NOAEL = 139 mg/kg/day M, 203 mg/kg/day F<br>LOAEL = 1,864 mg/kg/day M, 2,545 mg/kg/day F based on decreased body-weight gain (7–12%); increased cholesterol, bilirubin F/M, dark thyroids, increased relative liver weights, kidney, thyroid, bladder histopathology |
| 870.3150 | 90–Day oral toxicity-non-rodents | NOAEL = 80 mg/kg/day<br>LOAEL = 1,000/800 mg/kg/day based on decreased water consumption, vomiting, diarrhea, salivation, hypoactivity |
| 870.3700 | Prenatal developmental-rodents | *Maternal*<br>NOAEL = 85 mg/kg/day<br>*Maternal*<br>LOAEL = 1,000 mg/kg/day based on decreased body weight, and body weight gain<br>*Developmental*<br>NOAEL = 85 mg/kg/day<br>*Developmental*<br>LOAEL = 1,000 mg/kg/day based on decrease in mean litter weight and mean fetal weight |
| 870.3700 | Prenatal developmental-nonrodents | *Maternal*<br>NOAEL = 45 mg/kg/day<br>*Maternal*<br>LOAEL = 300 mg/kg/day based on deaths, decreased body weights, body weight gain, food consumption, production and size of fecal pellets<br>*Developmental*<br>NOAEL = 45 mg/kg/day<br>*Developmental*<br>LOAEL = 300 mg/kg/day based on death, decreased body weight, body weight gain, food consumption, production and size of fecal pellets; decreased fetal weight, increased fetal runts, retarded ossification, 13 thoracic vertebrae and pairs of ribs |
| 870.3800 | 2-Generation reproduction and fertility effects (rats) | *Parental/systemic*<br>NOAEL = 23.1 mg/kg/day M, 27.4 mg/kg/day F<br>*Parental/systemic*<br>LOAEL = 294 mg/kg/day M, 343 mg/kg/day F based on decreased body weight (11–13%), and body weight gain (11–17%)<br>*Reproductive*<br>NOAEL = 294/343 mg/kg/day<br>*Reproductive*<br>*Offspring*<br>NOAEL = 23.1 mg/kg/day M, 27.4 mg/kg/day F<br>*Offspring*<br>LOAEL = 294 mg/kg/day based on decreased pup body weights on PND 21 |
| 870.4100 | Chronic toxicity - dogs | NOAEL = 30 mg/kg/day<br>LOAEL = 250 mg/kg/day based on decreased body weight, food and water consumption, food efficiency, increased neutrophils, decreased clotting time |
| 870.4200 | Carcinogenicity mice | NOAEL = 210.9 mg/kg/day M, 253.8 mg/kg/day F<br>No toxicologically significant effects were found |
| 870.4300 | Combined Chronic/carcinogenicity (rats) | NOAEL = 17 mg/kg/day M, 22 mg/kg/day F<br>LOAEL = 221 mg/kg/day M, 291 mg/kg/day F based on decreased body-weight gain (5–15% M, 15–45% F) 10–15% at 6 months; increased serum cholesterol, gamma glutamyl transferase, relative liver weights; liver, thyroid histopathology increased thyroid adenomas |
| 870.5100 | Gene mutation | There was no evidence of induced mutant colonies over background |
| 870.5300 | Cytogenetics | There was no clear evidence of biologically significant induction of mutant colonies over background |
| 870.5375 | Chromosome aberration | There was no evidence of chromosome aberrations induced over background |

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

| Guideline No. | Study Type | Results |
|---|---|---|
| 870.5395 | Mammalian erythrocyte micronucleus test in mice | There was no statistically significant increase in the frequency of micronucleated polychromatic erythrocytes in mouse bone marrow at any dose or harvest time |
| 870.5550 | Unscheduled DNA synthesis in mammalian culture | Negative in inducing unscheduled DNA synthesis in rat hepatocytes as a result of *in vivo* gastric intubation |
| 870.6200 | Acute neurotoxicity screening battery (rat) | NOAEL = 100 mg/kg/day M, 100 mg/kg/day F<br>LOAEL = 1,000 mg/kg/day M, 1,000 mg/kg/day F based on decreased motor activity, ataxia, and decreased body temperature in both sexes, decreased hind limb grip strength in males, and increased dilated pupils in females on Day 1 |
| 870.6200 | Subchronic neurotoxicity screening battery (rat) | NOAEL = 44.3 mg/kg/day F<br>LOAEL = 429.9 mg/kg/day F, greater than 391.9 mg/kg/day M based on decreased body weight (8%), body weight gain (21%), food consumpton (9–15%) F. No effects in males |

*B. Toxicological Endpoints*

The dose at which 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 LOAEL of concern is identified 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 UFs may be used: ''Traditional UF'' the ''special FQPA safety factor; '' and the ''default FQPA safety factor.'' By the term ''traditional UF'' EPA is referring to those additional UFs used prior to FQPA passage to account for data base 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 safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional UF or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (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 safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand ($1 \times 10^{-5}$), one in a million ($1 \times 10^{-6}$), or one in ten million ($1 \times 10^{-7}$). 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 pyrimethanil used for human risk assessment is shown in the following Table 2.

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

| Exposure Scenario | Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF | Special FQPA SF and Level of Concern for Risk Assessment | Study and Toxicological Effects |
|---|---|---|---|
| Acute dietary (Females 13-50 years of age) | NOAEL = 45 mg/kg/day<br>UF = 100<br>Acute RfD = 0.45 mg/kg/day | Special FQPA SF = 1<br>aPAD = aRfD ÷ Special FQPA SF = 0.45 mg/kg/day | Developmental toxicity - rabbit<br>LOAEL = 300 mg/kg/day based on increased in fetuses with 13 thoracic vertebrae and 13 pairs of ribs |

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

| Exposure Scenario | Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF | Special FQPA SF and Level of Concern for Risk Assessment | Study and Toxicological Effects |
|---|---|---|---|
| Acute dietary (general population including infants and children) | NOAEL = 100 mg/kg/day<br>UF = 100<br>aRfD = 1 mg/kg/day | Special FQPA SF = 1<br>aPAD = aRfD ÷ Special FQPA SF = 1 mg/kg/day | Acute neurotoxicity - rat<br>LOAEL = 1,000 mg/kg/day based on decreased motor activity, ataxia, decreased body temperature, hind lim grip strength, and dilated pupils |
| Chronic dietary (All populations) | NOAEL= 17 mg/kg/day<br>UF = 100<br>Chronic RfD = 0.17 mg/kg/day | Special FQPA SF = 1<br>cPAD = chronic RfD ÷ Special FQPA SF = 0.17 mg/kg/day | Chronic toxicity - rat<br>LOAEL = 221 mg/kg/day based on decreased body-weight gains, increased serum cholesterol and GGT, increased relative liver/body-weight ratios, necropsy and histopathological findings in the liver and thyroid |
| Cancer (oral, dermal, inhalation) | | | Pyrimethanil was classified as a Group C carcinogen based on thyroid follicular cell tumors in both sexes of the 2–year rat study (NOAEL = 17 mg/kg/day). The Agency's Cancer Peer Review Committee recommended a threshold or Margin of Exposure (MOE) approach because the thyroid tumors associated with administration of pyrimethanil in Sprague-Dawley rats may be due to a disruption in the thyroid-pituitary status. |

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.518) for the residues of pyrimethanil, in or on imported wine grapes. Risk assessments were conducted by EPA to assess dietary exposures from pyrimethanil plus the metabolites, 4-[4,6-dimethyl-2-pyrimidinyl)amino]phenol and 4,6-dimethyl-2-(phenylamino)-5-pyrimidinol, 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: The acute analysis assumed tolerance level residues, 100% crop treated, and DEEM™ (ver. 7.76) default processing factors for all proposed commodities. Percent crop treated (PCT) data and anticipated residues were not used.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the DEEM software with the 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: The chronic analyses assumed tolerance level residues for ruminant tissues and milk and was refined through the use of average crop field trial residues for all crops. Conservative projected PCT estimates were used.

iii. *Cancer.* In conducting the cancer dietary risk assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The cancer risk assessment used the MOE methodology (MOE equals NOAEL (17 mg/kg/day) divided by chronic exposure). The following assumptions were made for the cancer exposure assessment: The cancer analyses assumed tolerance level residues for ruminant tissues and milk and was refined through the use of average crop field trial residues for all crops. Conservative projected percent crop treated estimates were used.

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 projected PCT (PPCT) information for the following crops: almonds, apples (field use), grapes, onions, pear (field use), peach/stone fruit, potatoes, strawberries, tomatoes, post harvest pome fruit, and post-havest citrus. A 100% crop treated estimate was assumed for bananas, tuberous and corm vegetables (excluding potatoes), milk, meat and meat-by-products. These PPCT values are based on projected market share information. The registrants provided the Agency with their anticipated market share projections. The Agency estimated market share projections by comparing the efficacy spectrum of the registered alternatives to the efficacy spectrum of pyrimethanil. In conducting its risk assessment, the Agency utilized EPA-derived estimates. As to Condition 1, the Agency believes that this approach is conservative and will overestimate the potential risk. To further ensure the reliability of these data, as a condition of registration, the registrant will be required to provide annual reports on the market penetration and market share of pyrimethanil for each of the registered crops. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which pyrimethanil 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 pyrimethanil and its major metabolite, 2-amino-4,6-dimethylpyrimidine 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 pyrimethanil and 2-amino-4,6-dimethylpyrimidine. Pyrimethanil is expected to have low mobility in the environment, and 2-amino-4,6,-dimethylpyrimidine is expected to be moderately mobile and more persistent in the environment.

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

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

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a percent referance dose (%RfD) or percent population adjusted dose (%PAD). Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to pyrimethanil and 2-amino-4,6-dimethylpyrimidine they are further discussed in the aggregate risk sections in Unit III.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of pyrimethanil and 2-amino-4,6-dimethylpyrimidine for acute exposures are estimated to be 37.8 parts per billion (ppb) for surface water and 4.8 ppb for ground water. The EECs for chronic exposures are estimated to be 5.1 ppb for surface water and 4.8 ppb for ground water. All EECs were adjusted for regional percent cropped area and all EECs were developed using the strawberry use pattern which represents the worst case scenario (highest single and seasonal application rates).

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).

Pyrimethanil 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 pyrimethanil and any other substances and pyrimethanil 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 pyrimethanil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning

common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

*D. Safety Factor for Infants and Children*

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety (MOS) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different MOS will be safe for infants and children. MOS are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using UFs (safety) 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*. EPA determined that there are no residual concerns for pyrimethanil for prenatal and postnatal toxicologically based on the following:

- There is no evidence of qualitative or quantitative increased susceptibility following prenatal or postnatal exposures.
- There are no concerns or residual uncertainties for prenatal and/or postnatal toxicity following exposure to pyrimethanil.
- Because a decrease in thyroid hormones may cause neurotoxicity in the young exposed prior to birth or early in life, the Agency considered the possible need for a comparative thyroid assay and reviewed the evidence for thyroid toxicity in the data base. The Agency concluded that a comparative thyroid assay in young and adult rats is not required.
- Based on the weight-of-evidence presented, the Agency concluded that a developmental neurotoxicity study is not required for pyrimethanil since there is no evidence of neuropathology and no neurotoxic signs up to 400 mg/kg/day in a subchronic neurotoxicity study in rats; the only evidence of neurotoxicity occurs after an acute dose level (1,000 mg/kg) much higher than those used to establish endpoints for risk assessment (100 mg/kg for acute exposures; approximately 20 mg/kg/day for repeated exposures), the 1,000 mg/kg/day dose is also higher than the doses tested or than those used in the reproduction study, which had a high dose of 343 mg/kg/day.
- The Agency noted, as seen in the CPRC report, that the effects on the thyroid-pituitary status were associated with the large increase in uridine diphosphate glucuronosyl transferases seen in the 14–day dietary rat study. The effects seen in the thyroid and the liver, while treatment-related, are not severe in nature; in each of these studies there is a wide dose spread (approxiamately 10–fold difference between NOAELs and LOAELs) which provides a measure of protection for any potential effects reflecting increased sensitivity or susceptibility in offspring. Additionally, the endpoints selected for risk assessment will cover any concern for thyroid or liver effects seen at higher doses.
- The Agency has a complete database on rat thyroid tumors. The mode of action in thyroid tumors in rats is well understood.

3. *Conclusion*. There is a complete toxicity data base for pyrimethanil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA factor is removed because of the completeness of the data base and the lack of concern for prenatal and postnatal toxicity. EPA concluded that reliable data shows an additional safety factor of 10X is not needed for the protection of infants and children.

*E. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against 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), 2 L/60 kg (adult female), and 1 L/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 pyrimethanil plus the metabolites, 4-[4,6-dimethyl-2-pyrimidinyl)amino]phenol and 4,6-dimethyl-2-(phenylamino)-5-pyrimidinol will occupy 10% of the aPAD for the U.S. population, 16% of the aPAD for females 13-49 years old, 15% of the aPAD for all infants less than 1 year old, and 31% of the aPAD for children 1-2 years old. In addition, there is potential for acute dietary exposure to pyrimethanil and 2-amino-4, 6-dimethylpyrimidine in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO PYRIMETHANIL PLUS THE METABOLITES, 4-[4,6-DIMETHYL-2-PYRIMIDINYL)AMINO]PHENOL AND 4,6-DIMETHYL-2-(PHENYLAMINO)-5-PYRIMIDINOL

| Population Subgroup | aPAD (mg/kg) | % aPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Acute DWLOC (ppb) |
|---|---|---|---|---|---|
| General U.S. population | 1 | 10 | 37.8 | 4.8 | 31,000 |
| All infants less than (1 year old) | 1 | 15 | 37.8 | 4.8 | 8,500 |
| Children (1-2 years old) | 1 | 31 | 37.8 | 4.8 | 6,900 |
| Females (13-49 years old) | 0.45 | 16 | 37.8 | 4.8 | 33,000 |

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pyrimethanil plus the metabolites, 4-[4,6-dimethyl-2-pyrimidinyl)amino]phenol and 4,6-dimethyl-2-(phenylamino)-5-pyrimidinol from food will utilize 1% of the cPAD for the U.S. population, 4.5% of the cPAD for all infants less than 1 year old, less than 1% of the cPAD for females 13-49 years old and 5.3% of the cPAD for children 1-2 years old. There are no residential uses for pyrimethanil that result in chronic residential exposure to pyrimethanil. Based on the use pattern, chronic residential exposure to residues of pyrimethanil is not expected. In addition, there is potential for chronic dietary exposure to pyrimethanil and 2-amino-4,6-dimethylpyrimidine 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 the following Table 4.

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO PYRIMETHANIL PLUS THE METABOLITES, 4-[4,6-DIMETHYL-2- PYRIMIDINYL)AMINO]PHENOL AND 4,6-DIMETHYL-2-(PHENYLAMINO)-5- PYRIMIDINOL

| Population Subgroup | cPAD mg/kg/day | %cPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. population | 0.17 | 1 | 5.1 | 4.8 | 5,900 |
| All infants less than (1 year old) | 0.17 | 4.5 | 5.1 | 4.8 | 1,600 |
| Females (13-49 years old) | 0.17 | less than 1 | 5.1 | 4.8 | 5,100 |
| Children (1-2 years) | 0.17 | 5.3 | 5.1 | 4.8 | 1,600 |

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).

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

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

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

5. *Aggregate cancer risk for U.S. population*. Pyrimethanil was classified as a Group C chemical (possible human carcinogen) and a non-linear methodology MOE was applied for the estimation of human cancer risk. The chronic dietary food analyses resulted in MOEs for the U.S. population of greater than 9,000. The estimated cancer aggregate MOE for the U.S. population is 9,200.

Generally, for threshold cancer effects where the mode of action is well understood, like thyroid carcinogens such as pyrimethanil, the general margin of exposure that indicates a reasonable certainty of no harm would be 100 (representing 2 factors of 10 for inter-species and intra-species extrapolation). The question of an acceptable MOE for threshold cancer effects is a relatively recent issue; however, given that the MOE here is 9,200, there is no question that this margin demonstrates that there is a reasonable certainty of no harm from cancer effects resulting from exposure to pyrimethanil.

EPA has asked for an additional cancer study in the mouse because even at the highest dose tested there were no adverse effects. Given the dose levels used in the first mouse cancer study, EPA does not expect that even if the second study was positive it would result in a cancer risk estimate any higher than the current risk estimate. For example, the NOAEL and LOAEL from the 2 year combined chronic/carcinogenicity study in rats are 17 mg/kg/day and 221mg/kg/day, respectively. The NOAEL (highest dose tested) from the first mouse cancer study was 210 mg/kg/day which is comparable to the LOAEL of 221 mg/kg/day in rat.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to pyrimethanil plus the metabolites, 4-[4,6-dimethyl-2-pyrimidinyl)amino]phenol and 4,6-dimethyl-2-(phenylamino)-5-pyrimidinol residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodologies (gas chromatography/mass spectrometry

(GS/MS) and high performance liquid chromatography/ultraviolet (HPLC-UV)) are 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 established or proposed CODEX or Mexican maximum residue limits (MRL). There is an established Canadian MRL for residues on grapes which is consistent with the recommended tolerance for grapes in this rule.

*C. Conditions*

1. Plantback intervals will be required for all crops other than those with registered uses.
2. Additional clarifying data will be required for Guideline 860.1300 Nature of the Residue - Livestock and 860.1380 Storage Stability.
3. A carcinogenicity study-mice (Guideline 870.4200(b) will be required because the high dose in the existing study was judged to be inadequate for assessing the carcinogenic potential of pyrimethanil.

## V. Conclusion

Therefore, tolerances are established (1) for residues of pyrimethanil on almond at 0.20 ppm; almond, hulls at 12 ppm; apple, wet pomace at 12 ppm; banana at 0.10 ppm; citrus oil at 150 ppm; fruit, citrus, group 10 (post-harvest) at 10 ppm; fruit, pome, group 11 (pre-harvest and post-harvest) at 3.0 ppm; fruit, stone (except cherry), group 12 at 3.0 ppm; grape at 5.0 ppm; grape, raisin at 8.0 ppm; onion, dry bulb at 0.10 ppm; onion, green at 2.0 ppm; pistachio at 0.20 ppm; strawberry at 3.0 ppm; tomato at 0.50 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.05 ppm; (2) for residues of pyrimethanil and its metabolite 4-[4,6-dimethyl-2-pyrimidinyl)amino]phenol on cattle, fat at 0.01 ppm; cattle, kidney at 0.30 ppm; cattle, meat at 0.01 ppm; cattle, meat-by-products (except kidney) at 0.01 ppm; goat, fat at 0.01 ppm; goat, kidney at 0.30 ppm; goat, meat at 0.01 ppm; goat, meat-by-products (except kidney) at 0.01 ppm; horse, fat at 0.01 ppm; horse, kidney at 0.30 ppm; horse, meat at 0.01 ppm; horse, meat-by-products (except kidney) at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, kidney at 0.30 ppm; sheep, meat at 0.01 ppm; and sheep, meat-by-products (except kidney) at 0.01 ppm; and (3) for residues of pyrimethanil and its metabolite 4,6-dimethyl-2-(phenylamino)-5-pyrimidinol in milk at 0.03 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–2004–0195 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 (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC. 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–2004–0195, 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 13, 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 180.518 is amended by adding text to paragraph (a), and by removing paragraph (e). Paragraph (a) reads as follows:

### § 180.518 Pyrimethanil; tolerances for residues.

(a) *General.* (1) Tolerances are established for the residues of the fungicide pyrimethanil 4,6-dimethyl-*N*-phenyl-2-pyrimidinamine in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Almond | 0.20 |
| Almond, hulls | 12 |
| Apple, wet pomace | 12 |
| Banana | 0.10 |
| Citrus oil | 150 |
| Fruit, citrus, group 10 (post-harvest) | 10 |
| Fruit, pome, group 11 (pre-harvest and post-harvest) | 3.0 |
| Fruit, stone (except cherry), group 12 | 3.0 |
| Grape | 5.0 |
| Grape, raisin | 8.0 |
| Onion, dry bulb | 0.10 |
| Onion, green | 2.0 |
| Pistachio | 0.20 |
| Strawberry | 3.0 |

| Commodity | Parts per million |
|---|---|
| Tomato | 0.50 |
| Vegetable, tuberous and corm, subgroup 1C | 0.05 |

(2) Tolerances are established for the combined residues of the fungicide pyrimethanil 4,6-dimethyl-*N*-phenyl-2-pyrimidinamine and its metabolite 4-[4,6-dimethyl-2-pyrimidinyl)amino]phenol in or on the following commodities:

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.01 |
| Cattle, kidney | 0.30 |
| Cattle, meat | 0.01 |
| Cattle, mbyp (except kidney) | 0.01 |
| Goat, fat | 0.01 |
| Goat, kidney | 0.30 |
| Goat, meat | 0.01 |
| Goat, mbyp (except kidney) | 0.01 |
| Horse, fat | 0.01 |
| Horse, kidney | 0.30 |
| Horse, meat | 0.01 |
| Horse, mbyp (except kidney) | 0.01 |
| Sheep, fat | 0.01 |
| Sheep, kidney | 0.30 |
| Sheep, meat | 0.01 |
| Sheep, mbyp (except kidney) | 0.01 |

(3) Tolerances are established for the combined residues of the fungicide pyrimethanil 4,6-dimethyl-*N*-phenyl-2-pyrimidinamine and its metabolite 4,6-dimethyl-2-(phenylamino)-5-pyrimidinol in or on the following commodity:

| Commodity | Parts per million |
|---|---|
| Milk | 0.03 |

* * * * *

[FR Doc. 04–19525 Filed 8–25–04; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[WC Docket No. 03–225; FCC 04–182]**

### Default Compensation Rate for Dial-Around Calls From Payphones Increased to $.494

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** By this document, the Commission approves an increase from $.24 to $.494 in the default compensation rate for dial-around calls from payphones. This is the first increase in the dial-around default rate in over five years. The intended effect of this order is to ensure the widespread deployment of payphones and to provide fair compensation to payphone service providers.

**DATES:** Effective September 27, 2004.

**ADDRESSES:** All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jon Stover, Wireline Competition Bureau, Pricing Policy Division, (202) 418–0390.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (Order), adopted on August 12, 2004. The complete text of this Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the Order may be purchased from the Commission's duplicating contractor, Best Copy and Printing Inc., Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563 or e-mail at *FCC@BCPIweb.com*.

### Synopsis of Final Rule

1. The Order approves an increase from $.24 to $.494 in the payphone dial-around default rate based on cost evidence submitted by the American Public Communications Council (APCC), the RBOC Payphone Coalition (BellSouth Public Communications, Inc., SBC Communications, Inc., and the Verizon telephone companies) and numerous interexchange (long-distance) carriers. The new rate of $.494 ensures that all payphone service providers (PSPs) are fairly compensated for each and every completed call as mandated by 47 U.S.C. 276.

2. According to cost studies submitted by APCC and the RBOC Payphone Coalition and the Commission's analysis of those cost studies, per-payphone costs have not changed dramatically since 1998, but falling call volumes at payphones have caused a major increase in per-call costs at marginal payphones. Thus, the Commission concluded that

the current dial-around compensation rate is no longer adequate to ensure widespread deployment of payphones because $0.24 no longer provides cost recovery for PSPs.

3. The proposed rate increase was opposed by six interexchange carriers (IXCs) and the Attorney General of the State of Texas. They contended that the Commission should not change the default compensation rate because market forces by themselves are able to determine the appropriate level of payphone deployment. The Commission found that these IXCs did not persuasively demonstrate how PSPs can be effectively compensated in a fully deregulated market.

4. The Commission received comments both on the general issue of whether to prescribe a different payphone compensation rate and on the specific issue of the amount of the rate. The Commission also received comments on the APCC and RBOC Payphone Coalition (Coalition) cost studies. Further, the Commission received comments on whether the methodologies reflected in those studies are consistent with the rate methodology the Commission used in *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96–128, *Third Report and Order,* 64 FR 13701, March 22, 1999. The Commission also received comments on whether the cost information presented in those studies accurately represents the costs currently incurred by payphone service providers. The Commission did not receive comments refuting the overwhelming majority of the information presented in the APCC and Coalition studies.

6. In the Order, the Commission again concluded that the methodology the Commission adopted in the *Third Report and Order* is the appropriate methodology to use in reevaluating the default dial-around compensation rate. The decision to use that methodology was affirmed by the United States Court of Appeals for the D.C. Circuit.

7. Based on the evidence in the record, the Commission concluded that an increase in the dial-around rate would is not so elastic that an increase in dial-around rates will suppress demand to the point of decreasing revenues. Moreover, the Commission found that the IXCs failed to present sufficient evidence to determine elasticities. Also, because monthly call volume is a key driver in determining the per-call compensation rate, the Commission sought comment on the efficacy and merit of the use in the APCC and Coalition cost studies of marginal payphone monthly call volumes of 233.9 and 219, respectively. Based on the evidentiary record, the Commission concluded that use of the APCC and Coalition volumes was reasonable.

8. The Commission sought comment on whether the particular inputs the Commission adopted in the *Third Report and Order* for various cost categories continued to be appropriate or whether there are changed conditions that warrant modifications of the particular inputs used in 1999. After reviewing the record, the Commission concluded that use of the *Third Report and Order* cost inputs for setting the rate in this proceeding was reasonable.

9. The Commission sought comment on whether additional cost categories are needed beyond those identified in the *Third Report and Order.* Specifically, the APCC and Coalition cost studies add an element for collection costs specific to dial-around compensation, and the Coalition study adds an element for uncollectibles. In the *Third Report and Order,* the Commission declined to include these costs in setting the dial-around rate, finding that the record in that docketed proceeding contained insufficient information to determine the extent to which administration costs vary when the number of coinless calls increases relative to coin calls. AT&T and others argue that the *Third Report and Order* methodology precludes the inclusion of an element for bad debt. Upon reviewing the record evidence, the Commission concluded that the addition of cost inputs reflecting collection costs and bad debt was reasonable.

10. The Commission sought comment on whether and how the Commission should consider the revenues and costs associated with the provision of additional services and activities in conjunction with payphones, such as Internet access or rental of advertising space. The Commission decided that these ''incidental'' revenues are relevant and should be subtracted from the the overall payphone revenue requirement.

11. Sprint urged the Commission to reconsider adopting a ''caller-pays'' compensation scheme, in which the caller would deposit coins or other forms of advance payment before making a dial-around call. In the *Third Report and Order,* the Commission noted that some economists would argued that a caller-pays methodology forms the basis for the purest market-based approach. The Commission rejected this approach based on evidence that Congress disapproved of a caller-pays methodology. For this reason, the Commission tentatively concluded in this NPRM that it should not adopt a ''caller-pays'' methodology. The Commission sought comment on this tentative conclusion.

12. In concluding that while it was legally possible to fashion a caller-pays system, the Commission decided that it did not make sense to increase the inconvenience to consumers of dial-around calling (by requiring the deposit of coins), and that nothing in Section 276 superseded 47 U.S.C. 226(e) effective prohibition of any form of an advance payment system. Thus, even if the convenience of coinless calling may come at a high price to the consumer, the Commission found that the record was devoid of any evidence supporting a new impediment to toll free calling.

**Paperwork Reduction Act Analysis**

13. This Order contains no new or modified information collections subject to the Paperwork Reduction Act of 1995, Pub. L. 104–13.

**Congressional Review Act**

14. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, *see* 5 U.S.C. 801 (a)(1)(A).

**Final Regulatory Flexibility Act Analysis**

15. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rule(s) in the Notice of Proposed Rulemaking (NPRM). No public comments were submitted on this IRFA.

16. This present Final Regulatory Flexibility Act analysis conforms to the RFA, as amended. *See* 5 U.S.C. 604. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission will send a copy of this Order, including this RFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

**Need for, and Objective of the Rule**

17. In adopting section 276 in 1996, Public Law 104–104, 110 Stat. 56 (1996) (codified at 47 U.S.C. 276), Congress mandated *inter alia* that the Commission ''establish a per call compensation plan to ensure that all payphone service providers are fairly

compensated for each and every completed intrastate and interstate call using their payphone * * *.'' In this Order, the Commission reexamined the default payphone compensation rate the Commission prescribed in 1999, and prescribed a new default payphone compensation rate of $.494.

*Legal Basis*

18. The proposed action is supported by 47 U.S.C. 151, 152, 154(i)–(j), 201, 226 and 276, as well as 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1216.

**Description and Estimate of the Number of Small Entities to Which Rule Applies**

19. The RFA directs agencies to provide a description of, and an estimate of, the number of small entities that may be affected by the rule adopted herein, where feasible. 5 U.S.C. 604(a)(3). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are more appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**.''

20. The Commission included small incumbent local exchange carriers (LECs) in this IRFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national in scope. *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). The Commission therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

21. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310 (changed to 717110 in October of 2002). According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513310 (issued October of 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. *Id.* The Commission notes that the census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.'' Under the size standard of 1,500 or fewer employees, the great majority of Wired Telecommunications Carriers can be considered small.

22. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in October of 2002). According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* (May 2002) (hereinafter *Telephone Trends Report*), Table 5.3. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of local exchange service are small businesses that may be affected by the rule(s) and policies proposed herein.

23. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive local exchange services or to competitive access providers (CAPs) or to ''Other Local Exchange Carriers,'' all of which are discrete categories under which Telecommunications Relay Service (TRS) data are collected. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002). According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *Telephone Trends Report,* Table 5.3. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. *Id.* In addition, 55 carriers reported that they were ''Other Local Exchange Carriers.'' *Id.* Of the 55 ''Other Local Exchange Carriers,'' an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rule(s) and policies proposed herein.

24. *Local Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002). According to the Commission data, 134 companies reported that they were engaged in the provision of local resale services. *Telephone Trends Report,* Table 5.3. Of these 134 companies, an estimated 131

have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of local resellers are small entities that may be affected by the rules and policies proposed herein.

25. *Toll Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002). According to the Commission's most recent *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. *Telephone Trends Report,* Table 5.3. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of toll resellers are small entities that may be affected by the rules and policies proposed herein.

26. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers (PSPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002). According to the Commission's most recent *Telephone Trends Report* data, 936 PSPs reported that they were engaged in the provision of payphone services. *Telephone Trends Report,* Table 5.3. Of these 936 PSPs, an estimated 933 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of PSPs are small entities that may be affected by the rules and policies proposed herein.

27. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002). According to Commission data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. *Telephone Trends Report,* Table 5.3. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by the rules and policies proposed herein.

28. *Operator Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002). According to Commission data, 22 companies reported that they were engaged in the provision of operator services. *Telephone Trends Report,* Table 5.3. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of operator service providers are small entities that may be affected by the rules and policies proposed herein.

29. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330 (changed to 517310 in October of 2002). According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. *Telephone Trends Report,* Table 5.3. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies proposed herein.

30. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310 (changed to 517110 in October of 2002). According to Commission data, 42 companies reported that their primary telecommunications service activity was the provision of ''Other Toll'' services. *Telephone Trends Report,* Table 5.3. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the rules and policies proposed herein.

**Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

31. The Commission finds that the new rate adopted herein does not increase existing reporting, recordkeeping or other compliance requirements.

**Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

32. The RFA requires an agency to describe any significant, specifically small business, 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 performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

33. The overall objective of this proceeding was to evaluate whether changes needed to be made to the current default rate of compensation for dial-around calls originating at payphones, in order to ensure that payphone service providers are fairly compensated, promote payphone competition, and promote the widespread deployment of payphone services. The Order solely adopted a new level of dial-around compensation.

**Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

34. None.

**Ordering Clauses**

35. Accordingly, *it is ordered that,* pursuant to the authority contained in 47 U.S.C. 151, 154, 201–205, 215, 218,

219, 220, 226, 276 and 405, that this Report and Order *is adopted.*

36. *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 Part 64**

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Rules Changes**

■ The Federal Communications Commission amends 47 CFR part 64 as follows:

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Revise § 64.1300(c) to read as follows:

**§ 64.1300 Payphone compensation obligation.**

* * * * *

(c) In the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of $.494.

[FR Doc. 04–19464 Filed 8–25–04; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 040429134–4135–01; I.D. 081704C]**

### Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #7 - Adjustments of the Recreational Fishery from the Queets River, Washington to Cape Falcon, Oregon

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

**ACTION:** Modification of fishing season; request for comments.

**SUMMARY:** NMFS announces that the recreational fishery in the area from the Queets River, WA to Cape Falcon, OR was modified to be open seven days per week, with a modified daily bag limit of all salmon, two fish per day, and all retained coho must have a healed adipose fin clip, effective Friday, July 23, 2004. This action was necessary to conform to the 2004 management goals. The intended effect of this action was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

**DATES:** Adjustment for the area from the Queets River, WA to Cape Falcon, OR effective 0001 hours local time (l.t.), July 23, 2004, until the chinook quota or coho quota are taken, or 2359 hours l.t., September 30, 2004, whichever is earlier; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through September 10, 2004.

**ADDRESSES:** Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2004salmonIA7.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [Docket No. 040429134–4135–01] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** Christopher Wright, 206–526–6140.

**SUPPLEMENTARY INFORMATION:** The NMFS Regional Administrator (RA) modified the season for the recreational fishery in the area from the Queets River, WA to Cape Falcon, OR to be open seven days per week, with a modified daily bag limit of all salmon, two fish per day, and all retained coho must have a healed adipose fin clip, effective Friday, July 23, 2004. On July 16 the Regional Administrator had determined available catch and effort data indicated that the catch was less than anticipated preseason and that provisions designed to slow the catch of chinook could be modified.

All other restrictions remain in effect as announced for 2004 ocean salmon fisheries. This action was necessary to conform to the 2004 management goals. Modification of recreational bag limits and recreational fishing days per calendar week is authorized by regulations at 50 CFR 660.409(b)(1)(iii).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the recreational fisheries for all salmon in the area from the Queets River to Leadbetter Point, WA (Westport Subarea) would open June 27 through the earlier of September 19 or a 74,900 coho subarea quota with a subarea guideline of 30,800 chinook, and the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea) would open June 27 through the earlier of September 30 or a 101,250 coho subarea quota with a subarea guideline of 8,000 chinook. Both the Westport and Columbia River Subareas were scheduled to be open Sunday through Thursday, except there was a provision that there may be a conference call no later than July 28 to consider opening seven days per week. In addition, both subarea's bag limits were for all salmon, two fish per day, no more than one of which may be a chinook, with all retained coho required to have a healed adipose fin clip.

On July 16, 2004, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that the catch was less than anticipated preseason and that provisions designed to slow the catch of chinook could be modified, relaxing the open days and bag limit provisions. As a result, on July 16 the states recommended, and the RA concurred, that both the Westport and Columbia River Subareas be open seven days per week, with a modified daily bag limit of all salmon, two fish per day, and all retained coho must have a healed adipose fin clip, effective Friday, July 23, 2004. All other restrictions that apply to this fishery remain in effect as announced in the 2004 annual management measures.

The RA determined that the best available information indicated that the

catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the already described action was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would limit fishers appropriately controlled access to available fish during the scheduled fishing season as unnecessarily maintaining two restrictions. The action immediately expanded the recreational fishery from 5 days per week to 7 days per week, and thus provides fishers with two additional days per week to fish for salmon. The action also allowed fishers to land up to two of any species of salmon, previously only one of the two-fish bag limit could be a chinook salmon.

This action is authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: August 20, 2004.

**Alan D. Risenhoover,**

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

[FR Doc. 04–19558 Filed 8–25–04; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 040429134–4135–01; I.D. 081704D]**

## Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #8 - Adjustment of the Commercial Salmon Fishery from Humbug Mountain, Oregon to the Oregon-California Border

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

**ACTION:** Closure; request for comments.

**SUMMARY:** NMFS announces that the commercial salmon fishery in the area from the Humbug Mountain, OR to the Oregon-California Border was modified to close at midnight on Monday, July 19, 2004. This action was necessary to conform to the 2004 management goals. The intended effect of this action is to allow the fishery to operate within the seasons and quotas as specified in the 2004 annual management measures.

**DATES:** Closure in the area from the Humbug Mountain, OR to the Oregon-California Border effective 2359 hours local time (l.t.), July 19, 2004, after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2004 annual management measures. Comments will be accepted through September 10, 2004.

**ADDRESSES:** Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2004salmonIA8.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments and include the docket number in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** Christopher Wright, 206–526–6140.

**SUPPLEMENTARY INFORMATION:** The NMFS Regional Administrator modified the season for the commercial salmon fishery in the area from the Humbug Mountain, OR to the Oregon-California Border to close at midnight on Monday, July 19, 2004. On July 19, the Regional Administrator determined that available catch and effort data indicated that the quota of 1,600 chinook salmon would be reached by midnight on Monday, July 19, 2004. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the commercial fishery for all salmon except coho in the area from Humbug Mountain, OR to the Oregon-California Border would open March 15 through May 31; June 1 through the earlier of June 30 or a 2,600–chinook quota; July 1 through the earlier of July 31 or a 1,600–chinook quota; August 1 through the earlier of August 29 or a 2,500–chinook quota; and September 1 through the earlier of September 30 or a 3,000–chinook quota.

The fishery in the area from Humbug Mountain, OR to the Oregon-California Border was modified by Inseason Action ı4 to close at midnight on Saturday, June 19, 2004, (69 FR 40817, July 7, 2004) because the available catch and effort data indicated that the quota of 2,600 chinook salmon had been achieved.

On July 19, 2004, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached by Monday, July 19. As a result, the State of Oregon recommended, and

the Regional Administrator concurred, that the area from Humbug Mountain, OR, to the Oregon-California Border close effective at midnight on Monday, July 19, 2004. All other restrictions that apply to this fishery remained in effect as announced in the 2004 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the state. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the time this action was effective by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

## Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agency have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Because of the rate of harvest in this fishery, failure to close the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: August 20, 2004.

**Alan D. Risenhoover,**

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

[FR Doc. 04–19557 Filed 8–25–04; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 69, No. 165
Thursday, August 26, 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 AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 71

**[Docket No. 00–094–1]**

**RIN 0579–AB84**

### Interstate Movement of Sheep and Goats; Approved Livestock Facilities, Identification and Recordkeeping Requirements

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations regarding the interstate movement of animals to require livestock facilities that handle sheep or goats in interstate commerce to be approved by us. This would include stockyards, livestock markets, buying stations, concentration points, or any other premises where sheep or goats in interstate commerce are assembled. Our approval would be contingent on the facility operator meeting certain minimum standards and other conditions relating to the receipt, handling, and release of sheep and goats at the facility, as well as complying with certain animal identification and recordkeeping requirements. The proposed standards and other conditions would be based, in part, on recently implemented regulations relating to the interstate movement of sheep and goats in order to control the spread of scrapie, a serious disease of sheep and goats. This proposed rule would provide for the establishment of standards for the approval of livestock facilities that handle sheep or goats in interstate commerce.

**DATES:** We will consider all comments that we receive on or before October 25, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 00–094–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–094–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–094–1'' on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Diane Sutton, Senior Staff Veterinarian, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1235; (301) 734–6954.

**SUPPLEMENTARY INFORMATION:**

## Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), regulates the interstate movement of certain animals (including poultry) and animal products to prevent the spread of livestock and poultry diseases within the United States. The regulations are contained in 9 CFR chapter I, subchapter C, parts 70 through 89. The regulations in part 71 contain general provisions covering the interstate transportation of animals and animal products. The regulations in part 71 also provide the standards and other requirements that livestock facilities, including stockyards, livestock markets, buying stations, concentration points, or any other premises where livestock in interstate commerce are assembled, must follow in order to be approved by APHIS. The approval of facilities by APHIS is intended to ensure that such facilities are constructed and operated in a manner that will help prevent the interstate transmission of livestock diseases. Such facilities are subject to State or Federal veterinary supervision. We presently require the approval of livestock facilities that handle horses, cattle, bison, or swine in interstate commerce.

The regulations in part 79 contain certain restrictions and other requirements regarding the interstate movement of sheep and goats in order to control the spread of scrapie within the United States. Scrapie is a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. It is a member of a class of diseases called transmissible spongiform encephalopathies. Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease. APHIS also administers the Scrapie Flock Certification Program (SFCP), described at 9 CFR part 54, and produces a program standards document entitled ''Program Standards—Voluntary Scrapie Flock Certification Program,'' which is available on the Internet at *http://www.aphis.usda.gov/vs/scrapie/umr*. A copy of the program standards also may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

On August 21, 2001, we published in the **Federal Register** (66 FR 43964–44003, Docket No. 97–093–5) a final rule amending part 79 by providing additional restrictions for the interstate movement of sheep and goats. We also added new requirements with regard to the identification, recordkeeping, and health status of sheep and goats in order to provide a more effective national program for surveillance of scrapie and for the tracing of animals affected with scrapie. In our August 2001 final rule,

we also amended part 54 by reinstating a scrapie indemnification program for sheep and goats. The recent changes to parts 54 and 79 were designed, in part, to provide a national standard for the control and eradication of scrapie. These changes also reflect our commitment to eliminating scrapie from the United States.

For the scrapie eradication program to be effective, it is imperative that the identification, recordkeeping, and other requirements in part 79 be carried out at livestock facilities that handle sheep and goats in interstate commerce. The regulations in part 79 do contain requirements relating to identification, recordkeeping, and handling of sheep and goats that must be followed by approved livestock markets. However, at this time, the regulations in part 71 do not provide for the approval of facilities that handle sheep and goats as they do for facilities that handle cattle and bison, swine, and horses. Therefore, it is imperative that an approval process be added to our regulations to ensure that certain uniform practices relating to identification, recordkeeping, and handling of sheep or goats be followed at these facilities in order to help minimize the risk of the spread of scrapie.

Therefore, we are proposing to amend the regulations in part 71 by requiring that livestock facilities handling sheep or goats in interstate commerce would have to be approved by APHIS and be subject to State or Federal veterinary supervision. Providing such approval would be contingent on the facility agreeing to comply with certain standards and conditions, which we would add to § 71.20 of the regulations.

**Changes to Part 71**

The regulations in § 71.20(a) contain an agreement that sets out the requirements that livestock facilities handling certain classes of livestock in interstate commerce, *i.e.*, cattle and bison, swine, and horses, must agree to follow in order to be designated as an approved livestock facility. (We note that, although sheep are included in the definition of livestock in § 71.1, the agreement in § 71.20(a) contains no sheep-related provisions.) In that agreement, paragraphs (a)(1) through (a)(13) provide certain general requirements relating to oversight, recordkeeping, animal identification, cleaning and disinfection, and facility and equipment standards. These requirements include:

- Providing the State animal health official and the APHIS area veterinarian in charge a schedule of the facility's sale days that indicates the types of animals that will be handled at the facility on each sale day;
- Ensuring that an accredited veterinarian, State representative, or APHIS representative is on the facility premises on sale days to perform duties in accordance with State and Federal regulations;
- Allowing State representatives and APHIS representatives access to the facility during normal business hours to evaluate whether the facility and its operations are in compliance with applicable regulations;
- Providing immediate notification to an APHIS representative, a State representative, or an accredited veterinarian of any livestock at the facility that are known to be infected, exposed, or suspect, or that show signs of possibly being infected, with any infectious, contagious, or communicable disease;
- Placing reactor, suspect, or exposed livestock in quarantined pens apart from all other livestock while such animals are at the facility;
- Prohibiting the sale of any reactor, suspect, or exposed livestock, and any livestock that show signs of being infected with any communicable disease, except when authorized by an APHIS representative, State representative, or accredited veterinarian;
- Maintaining documents such as weight tickets, sales slips, and records of origin, identification, and destination relating to livestock handled by the facility for a period of 5 years. Such documentation is subject to review by APHIS representatives and State representatives;
- Ensuring that all livestock are officially identified in accordance with the applicable regulations;
- Maintaining the facility, including all yards, docks, pens, alleys, sale rings, chutes, scales, means of conveyance, and other associated equipment, in a clean and sanitary condition in accordance with the regulations. The facility also must maintain an adequate supply of disinfectant and serviceable equipment for cleaning and disinfection;
- Maintaining the facility and equipment in good repair. The facility must provide well-constructed and well-lighted livestock handling chutes, pens, alleys, and sales rings for the inspection, identification, vaccination, testing, and branding of livestock. Electrical outlets also must be provided at the chute area for branding purposes; and
- Ensuring that quarantined pens are clearly marked as such and are cleaned and disinfected in accordance with the regulations in part 71 before being used to pen livestock that are not reactor, suspect, or exposed animals. The quarantined pens also must have adequate drainage, and the floors and other parts of the quarantined pens with which reactor, suspect, or exposed livestock, or their excrement or discharges, may have contact must be constructed of materials that are substantially impervious to moisture and able to withstand continuing cleaning and disinfection.

We propose to amend the agreement in § 71.20(a) so that livestock facilities handling sheep or goats in interstate commerce also would be specified as being subject to the general standards just discussed.

In the agreement in § 71.20, paragraphs (a)(14), (a)(15), and (a)(16) provide specific additional handling and identification standards applicable to cattle and bison, swine, and horses, respectively, that approved livestock facilities must comply with to help prevent the spread of certain animal diseases specific to those livestock species. We would amend the agreement in § 71.20(a) to provide specific additional standards applicable to sheep and goats that livestock facilities receiving sheep or goats in interstate commerce would have to follow in order to minimize the risk in the spread of scrapie. A number of additional conditions would be based on requirements appearing in part 79 of the regulations.

This proposed rule would provide for the establishment of standards for the approval of livestock facilities that handle sheep or goats in interstate commerce, and would facilitate our enforcement of existing animal identification and recordkeeping requirements in part 79 of the regulations. A more detailed discussion of the proposed changes to part 71 of the regulations follows.

*Definitions*

We are proposing to add definitions to § 71.1 of the regulations for the terms *consistent States* and *inconsistent States*. Both of these terms would be used in conjunction with the approval of livestock facilities handling sheep or goats, as discussed below. *Consistent States* would be defined as those States listed as consistent States in 9 CFR 79.1 because they meet certain standards, as provided in part 79, for conducting an active State scrapie program that involves the identification of scrapie in sheep and goats for the purpose of controlling the spread of scrapie. *Inconsistent States* would be defined as those States not included in the list of

consistent States appearing in § 79.1. Inconsistent States would generally include those States that do not consider scrapie a reportable disease or do not require the quarantine of infected flocks or source flocks, or that otherwise do not meet the requirements in 9 CFR 79.6. Section 79.6 sets forth the standards for States to qualify as consistent States. We note that, under the regulations in § 79.1, all 50 States currently hold consistent State status.

We also would amend the definition of *livestock* in § 71.1 of the regulations by adding goats, cervids, and camelids to the current list of animals that includes horses, cattle, bison, sheep, and swine.

*Interstate Movement of Diseased Animals*

Section 71.3 of the regulations covers the interstate movement of diseased animals and poultry. Paragraph (a) of § 71.3 provides that animals or poultry affected with a communicable disease endemic to the United States cannot be moved interstate except as provided in paragraphs (c), (d), and (e) of that same section. Scrapie is listed among the diseases endemic to the United States in § 71.3(a). Paragraphs (c) and (d) of § 71.3 authorize the interstate movement of certain classes of livestock affected with particular diseases under specific circumstances, while in § 71.3(e), the Administrator is authorized to grant exceptions in specific cases involving individual animals being moved to a designated diagnostic or research facility.

Section 71.3 of the regulations does not provide a specific exception from the general interstate movement prohibition for animals affected with scrapie. However, the scrapie regulations in part 79 do allow for the interstate movement of sheep and goats with scrapie status designations under certain conditions. Since part 79 does authorize the restricted movement of animals with scrapie status designations, we would amend § 71.3 of the regulations and add a new paragraph (c)(5) that would stipulate that sheep and goats designated, with regard to scrapie, as exposed, high-risk, suspect, or scrapie-positive animals, as those terms are defined in part 79 of the regulations, may be moved interstate in accordance with the regulations in part 79.

*Approval of Livestock Facilities*

The regulations in § 71.20(a) provide the standards and other conditions that livestock facilities handling horses, cattle, bison, or swine in interstate commerce must follow in order to be approved by us. These standards and conditions are intended, in part, to ensure that the facilities are constructed and operated in a manner that will prevent the transmission of livestock diseases in interstate commerce. Some of the standards and conditions provided in § 71.20(a) apply to all approved livestock facilities, while other standards and conditions apply only to those facilities that handle specific classes of livestock.

To be designated as an approved livestock facility, the facility operator must execute a livestock facility agreement that indicates his or her intention to comply with all applicable standards and conditions provided in § 71.20(a). The facility operator also must indicate, by initialing the appropriate paragraphs of the agreement, the class or classes of livestock that will be handled at the facility. Paragraph (b) of § 71.20 sets forth the basis and procedures for APHIS withdrawing or denying approval of a livestock facility.

We would amend § 71.20(a) to require that livestock facilities handling sheep or goats in interstate commerce would now have to be approved by APHIS. APHIS approval would be contingent on the facility meeting certain standards and conditions, as provided in § 71.20(a), that would relate to facility construction, maintenance, and equipment, as well as other requirements relating to the receipt, handling, and release of animals. Facility operators also would be subject to certain identification and recordkeeping requirements relating to sheep and goats handled at the facility.

In broadening the applicability of § 71.20(a) to cover those livestock facilities that handle sheep or goats in interstate commerce, we would amend § 71.20(a) to include those particular animal health-status designations covering sheep and goats affected with scrapie. We also would amend § 71.20(a) by referencing the applicability of the scrapie regulations in part 79, where appropriate.

Paragraph (a)(3) of § 71.20 provides that State representatives and APHIS representatives must be granted access to an approved livestock facility during normal business hours to evaluate whether the facility and its operations are in compliance with the livestock facility agreement, as well as with other applicable provisions in 9 CFR parts 71, 75, 78, and 85. Part 75 contains additional restrictions with regard to the interstate movement of horses, asses, ponies, mules, and zebras with communicable diseases; part 78 contains additional interstate movement restrictions for animals with brucellosis; and part 85 contains additional interstate movement restrictions for animals with pseudorabies.

In broadening the scope of § 71.20 to include the approval of livestock facilities handling sheep and goats, we would amend § 71.20(a)(3) by adding a reference to the scrapie regulations in part 79. With this change, livestock facilities approved to handle sheep or goats under part 71 of the regulations also would be subject to the requirements in part 79, which include movement restrictions, identification and recordkeeping requirements, and other conditions affecting the interstate movement of sheep and goats in order to control the spread of scrapie.

Paragraph (a)(4) of § 71.20 provides that an APHIS representative, a State representative, or an accredited veterinarian shall be immediately notified of the presence at the facility of any livestock that are known to be infected, exposed, or suspect, or that show signs of possibly being infected, with any infectious, contagious, or communicable disease. We are proposing to amend § 71.20(a)(4) to clarify the applicability of this provision to all animal health-status designations involving scrapie. As discussed previously, sheep and goats with scrapie disease classifications are classified as exposed, high-risk, suspect, or scrapie-positive animals in accordance with part 79 of the regulations. The term scrapie-positive would be covered by the term infectious. So, to cover classifications relating to scrapie, we would amend § 71.20(a)(4) by adding the scrapie status designation ''high-risk.''

Paragraph (a)(5) of § 71.20 provides that any reactor, suspect, or exposed livestock shall be held in quarantined pens apart from all other livestock at an approved livestock facility. We require the separation of animals affected with communicable livestock diseases as a further safeguard against the spread of such diseases. To emphasize the applicability of the quarantine requirements in § 71.20(a)(5) to animals subject to scrapie, we would amend § 71.20(a)(5) and add references to ''high-risk'' and ''scrapie-positive'' alongside the existing animal health-status designations of reactor, suspect, or exposed livestock. We would qualify this change, however, by noting that the quarantine requirements would not apply to those sheep or goats designated as scrapie-exposed or high risk animals that will be moved directly to slaughter in accordance with parts 71 and 79. We would provide this exception since these particular slaughter animals

would pose a negligible risk for the spread of scrapie.

Paragraph (a)(6) of § 71.20 provides that no reactor, suspect, or exposed livestock, nor any livestock that show signs of being infected with any infectious, contagious, or communicable disease, may be sold at an approved livestock facility, except as authorized by an APHIS representative, State representative, or an accredited veterinarian. We would make a number of changes to this provision. First, we would expand the coverage of § 71.20(a)(6) to apply not only to the sale of livestock, but also to any other situation in which the animals are moved from the facility. To clarify the regulatory basis for allowing the sale or movement of such animals, we would provide that such sale or movement from the facility must be in accordance with 9 CFR parts 71, 75, 78, 79, or 85. Referring to those specific regulatory authorities would provide additional guidance as to when affected animals could be sold or moved from the facility. Finally, in order to broaden the applicability of § 71.20(a)(6) to cover livestock facilities with sheep or goats, we would add references to the scrapie health-status designations ''high-risk'' and ''scrapie-positive.'' This would mean that sheep and goats designated as suspect, exposed, high-risk, or scrapie-positive animals could not be sold at or moved from an approved livestock facility except in accordance with 9 CFR parts 71 and 79.

Paragraph (a)(7) of § 71.20 provides that documents such as weight tickets, sales slips, and records of origin, identification, and destination that relate to livestock that are in, or that have been in, the facility shall be maintained by the facility for a period of 2 years. APHIS representatives and State representatives must be permitted to review and copy those documents during normal business hours. We would amend § 71.20(a)(7) to require that facilities must maintain documents relating to sheep or goats for a period of 5 years. These documents are used to trace a positive animal back to its flock of origin, so the additional 3 years are necessary because the incubation period for scrapie is between 2 and 5 years.

Paragraph (a)(8) of § 71.20 provides that all livestock must be officially identified in accordance with the applicable regulations in 9 CFR parts 71, 75, 78, and 85 at the time of, or prior to, entry into an approved livestock facility. As noted previously, parts 75, 78, and 85 include requirements not covered in the general provisions of part 71 of the regulations with regard to the interstate movement of particular classes of livestock that are affected with certain communicable livestock diseases. Identification and recordkeeping requirements relating to the interstate movement of sheep and goats are provided in part 79. Therefore, to enlarge the scope of part 71 to cover approved livestock facilities handling sheep or goats, we would amend § 71.20(a)(8) by adding a reference to part 79 so that operators of approved livestock facilities handling sheep or goats in interstate commerce would be subject to the identification and recordkeeping requirements found in part 79 of the regulations.

Paragraph (a)(11) of § 71.20 provides that quarantined pens at approved livestock facilities must be clearly labeled with paint or placarded with the word ''Quarantined'' or the name of the disease of concern, and must be cleaned and disinfected in accordance with the regulations in part 71 before the pens may be used to hold livestock that are not reactor, suspect, or exposed animals. In order for this provision to be applicable to facilities handling sheep or goats affected with scrapie, we would amend § 71.20(a)(11) and insert references to the animal health-status designations ''high-risk'' and ''scrapie-positive'' alongside the existing designations of reactor, suspect, and exposed. In addition, because the regulations in 9 CFR part 54, ''Control of Scrapie,'' contain specific cleaning and disinfection procedures related to scrapie, we would also amend paragraph (a)(11) so that it specifies that quarantined pens used to hold animals affected with scrapie would have to be cleaned and disinfected in accordance with 9 CFR 54.7(e)(2), which contains specific procedures on the cleaning and disinfection of non-earth surfaces of premises used to hold animals affected with scrapie.

Paragraph (a)(12) of § 71.20 provides that quarantined pens shall have adequate drainage, and the floors and those parts of the walls of the quarantined pens with which reactor, or suspect, or exposed livestock, or their excrement or discharges, may have contact shall be constructed of materials that are substantially impervious to moisture and able to withstand continued cleaning and disinfection. Similar to changes proposed elsewhere in part 71 of the regulations, we would amend § 71.20(a)(12) by adding references to the animal health-status designations of ''high-risk'' and ''scrapie-positive'' alongside the references to reactor, suspect, or exposed livestock in order to cover sheep and goats affected with scrapie.

Paragraphs (a)(14) through (a)(16) of § 71.20 provide additional standards that operators of approved livestock facilities must follow in order for their facility to handle particular classes of livestock, i.e., cattle and bison, swine, and horses. We are proposing to add a new paragraph (a)(17) that would list additional standards and conditions that operators of approved livestock facilities handling sheep or goats in interstate commerce would have to follow in order for their facility to handle sheep or goats in interstate commerce. To add this paragraph at § 71.20(a)(17), we would redesignate existing paragraphs (a)(17) through (a)(20) as paragraphs (a)(18) through (a)(21).

Under proposed § 71.20(a)(17), the facility operator would have to indicate in the livestock facility agreement whether the facility would be handling sheep or goats; and if so, whether those animals would be breeding or slaughter animals. The operator also would have to indicate in the agreement whether the facility would be receiving sheep or goats classified as scrapie-positive, exposed, high-risk, or suspect animals; and if so, whether those particular animals are breeding animals or for slaughter only.

Under proposed § 71.20(a)(17) of the regulations, operators of livestock facilities handling sheep or goats in interstate commerce also would have to adhere to the following operating practices:

- The facility would have to receive, handle, and release sheep and goats in accordance with parts 71 and 79 of the regulations;
- The facility operator would have to officially identify all sheep and goats handled at the facility, including whether the animals are from consistent or inconsistent States, and maintain relevant records pertaining to those animals in accordance with part 79 of the regulations;
- Breeding and slaughter animals would have to remain separated at all times while at the facility, so that no contact will occur;
- Any breeding sheep or goats that are designated, with regard to scrapie, as exposed, high-risk, suspect, or scrapie-positive animals, or any slaughter sheep or goats that are designated as scrapie-positive or suspect animals, would have to be held in quarantined pens while at the facility;
- Any sheep or goats that are designated as scrapie-exposed or high-risk animals could be consigned from the facility only in accordance with part 79 of the regulations; and
- Any sheep or goats that are designated as scrapie-positive or suspect

animals would have to be reported immediately by the facility operator to a State representative, an APHIS representative, or an accredited veterinarian. Such animals could be released or consigned from the facility only if accompanied by a permit issued by a State representative, an APHIS representative, or an accredited veterinarian, allowing movement of the animals to an approved disposal site or research facility in accordance with parts 71 and 79 of the regulations.

*Miscellaneous Changes*

We would make miscellaneous nonsubstantive changes in § 71.1 to the definitions of *accredited veterinarian, area veterinarian in charge, interstate commerce, State, State animal health official,* and *State representative,* to be consistent with how these terms appear elsewhere in the regulations, as well as to be consistent with the Government Printing Office Style Manual.

We also would amend § 71.6(a) to include a specific reference to goats among the listed animals subject to this provision on cleaning and disinfecting of conveyances used in the interstate transportation of affected with or infected with a livestock or poultry disease.

The proposed addition of paragraph (a)(17) to § 71.20 would require several nonsubstantive changes in § 71.20 to include a reference to that paragraph or to update references to other paragraphs that would be redesignated as a result of the addition of paragraph (a)(17). We also would amend § 71.20(a)(18) to refer to part 79 in addition to parts 71, 75, 78, and 85.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule, which is set out below. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

We do not have enough data for a comprehensive analysis of the economic effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities who may incur benefits or costs from implementation of this proposed rule and the economic effect of those benefits or costs. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic effect on a substantial number of small entities.

Under the Animal Health Protection Act (7 U.S.C. 8301–8317), USDA is authorized to conduct programs for the control of communicable animal diseases and to regulate the interstate movement of animals that may spread disease. The regulations are contained in 9 CFR chapter I, subchapter C, parts 70 through 89. The regulations in part 71 (referred to below as the regulations) contain general provisions covering the interstate transportation of animals and animal products. The regulations also set forth requirements that livestock facilities handling certain classes of livestock in interstate commerce, including cattle and bison, swine, and horses, must follow in order to be designated by us as approved livestock facilities.

This proposed rule would establish a means for APHIS approval of livestock facilities that handle sheep or goats in interstate commerce. The conditions for approval would be based, in part, on recently implemented regulations relating to the interstate movement of sheep and goats in order to control the spread of scrapie.

To be designated as an approved livestock facility for handling sheep or goats, the facility would have to enter into an agreement in which it agrees to follow certain identification, recordkeeping, and handling practices with respect to animals under its control in accordance with 9 CFR parts 71 and 79. Any reactor, suspect, exposed, scrapie high-risk, or scrapie-positive livestock would have to be held in quarantined pens apart from all other livestock at the facility. The quarantined pens holding such animals would have to be clearly marked, and would have to be cleaned and disinfected before being used by other animals not affected with disease. The quarantined pens also would have to have proper drainage and be constructed of materials that are substantially impervious to moisture and able to withstand continued cleaning and disinfection.

To be approved, such facilities would have to provide access to accredited veterinarians, State representatives, and APHIS representatives, as well as comply with certain notification requirements with respect to livestock known to be infected, exposed, or suspect, or that show signs of being infected with a communicable disease. Such facilities also would have to keep State animal health officials and APHIS informed of upcoming sale days at the facility.

This proposed rule, if implemented, would strengthen scrapie control programs on the national level, reduce the losses that scrapie causes to the sheep and goat industries, and prevent the further spread of scrapie. Proper handling and identification of animals that may be infected with scrapie is essential for an effective scrapie eradication program. States do not have uniform requirements for markets handling sheep and goats in interstate commerce. Therefore, it is imperative that a process for approving livestock facilities that handle sheep or goats in interstate commerce be established to ensure that such livestock facilities follow certain identification, recordkeeping, and handling practices and procedures designed to prevent the spread of scrapie and other communicable diseases.

The primary alternative to the proposed rule would be to make no changes at all to the existing regulations. The regulations in part 79 already include certain requirements to be followed by approved livestock markets with respect to the identification, recordkeeping, and handling of sheep and goats in interstate commerce. However, the regulations in part 71 do not specify the process by which these facilities are to be approved. Therefore, it is imperative that an approval process be added to our regulations.

We considered how we could consolidate or simplify the compliance and reporting requirements contained in this proposal. We believe we accomplish this objective by including the approval standards for sheep and goat facilities in part 71 amongst the existing requirements for approval of livestock facilities handling other classes of livestock. In this way, many of the same requirements for approving sheep and goat facilities would parallel those requirements for approving facilities handling other classes of livestock.

*Overview of U.S. Sheep and Goat Industry Operations, Inventory, and Trade*

As of January 1, 2004, there were 6.09 million sheep and lambs in the United States, valued at approximately $721 million. This represented a 3 percent decline from the level on January 1, 2003. The above total of 6.09 million sheep and lambs consists of 4.48 million

breeding sheep and lambs and 1.61 million market sheep. There were approximately 64,170 operations that produced sheep and lambs in 2002, which is 1.5 percent less than the previous year.[1]

Sheep are produced in all parts of the United States, although stock levels vary from State to State. Ten States (California, Colorado, Idaho, Iowa, Montana, Oregon, South Dakota, Texas, Utah, and Wyoming) account for nearly 69 percent of the total inventory, mostly in the Mountain, North Central, and South Central States. The northeastern and southeastern States have the smallest sheep populations, accounting only for 5.2 percent of the total.

TABLE 1.—*Sheep and Lambs: Farms and Inventory by Size, 2003*

| Number of sheep/lambs per farm | Number of farms with sheep/lambs | Percent of farms (based on total number of farms) | Inventory of sheep and lambs | Percent of sheep and lambs (based on total inventory) |
|---|---|---|---|---|
| 1 to 99 | 58,909 | 91.8 | 1,820,910 | 29.9 |
| 100 to 499 | 4,299 | 6.7 | 1,449,420 | 23.8 |
| 500 to 4,999 | 898 | 1.4 | 2,015,790 | 33.1 |
| 5,000 or more | 65 | 0.1 | 803,880 | 13.2 |
| Total | 64,170 | 100 | 6,090,000 | 100 |

Source: USDA/NASS, *Sheep and Goats,* January 2004.

About 92 percent of the producers had fewer than 100 animals each, but these accounted only for about 30 percent of the total inventory of sheep and lambs. On the other hand, large sheep operations with 5,000 sheep or more each represented less than 1 percent of the farms but accounted for about 13 percent of the total inventory. The overall average size of a flock was 95 animals in 2003; therefore, most sheep operations would be classified as small entities with annual sales of $750,000 or less. The average size of a flock on large operations of 5,000 sheep or more was 12,367 animals, while that of small operations was 82 animals. Of the total number of operations, about 60 percent of producers were full owners, about 32 percent were part owners, and 8 percent were tenants.

A total of about 5.65 million sheep and lambs were marketed in 2003. A little over 85 percent of these were lambs and the rest were mature sheep. Marketing includes animals for slaughter market, younger animals shipped to other States for feeding and breeding purposes, and some exports. Approximately 81 percent of sheep and lambs are marketed, involving the crossing of State lines in most cases.[2]

A total of 3.042 million sheep and lambs were slaughtered in 2003, of which 95.2 percent were lambs.[3] Most of the sheep and lambs shipped for immediate slaughter would not be affected by this proposed rule since they would not be handled by a livestock market or other assembly point en route to the slaughter facility.

In 1997 (the latest year for which data are available for all States), there were 57,925 goat operations in the United States, which raised about 1.99 million goats, valued at approximately $74 million, a decline of about 21 percent from the 1992 level. About 40.7 percent were Angora goats, about 7.4 percent were milk goats, and about 52 percent were goats other than Angora or milk goats. The number of Angora goats declined from about 1.8 million in 1992 to about 0.8 million in 1997, as many mohair producers shifted from producing Angora goats to meat type goats because of the repeal of the Wool and Mohair Act in October 1993. The State of Texas accounted for about 64.3 percent of the goat inventory. Other important goat-raising States are Arizona, California, Georgia, New Mexico, North Carolina, Oklahoma, and Tennessee. These States together represented another 14.2 percent of the U.S. goat holdings. Goat holdings vary in size and degree of commercialization, with many producers relying on other sources of income. With an average holding of about 35 goats, most, if not all, goat operations are relatively small, and would be classified as small entities with annual sales of $750,000 or less.

There are currently about 1,300 livestock facilities that handle cattle and calves, swine, or sheep and goats moving in interstate commerce. Of this total, about 126 handle sheep or goats.

The United States produced about 204 million pounds of lamb and mutton in 2003, a decline of about 8 percent from the previous year. Imports of lamb and mutton increased from 162.8 million pounds in 2002 to 170.9 million pounds in 2003, an increase of about 5 percent.

An increasing proportion of domestic demand for lamb and mutton is met by imports. The share of imports in domestic consumption of lamb and mutton increased from about 11 percent in 1991 to about 46.5 percent in 2003. Even with such increased imports both total consumption as well as per capita consumption of lamb declined. Total consumption declined from about 396 million pounds to 367.5 million pounds, a decline of about 7.2 percent. Per capita consumption (based on carcass weight equivalent) of lamb and mutton slightly declined from 1.6 pounds per person in 1991 to 1.1 pounds per person in 2002. This decline in sheep meat consumption is not unique to the United States but is a worldwide phenomenon.

The United States has a limited foreign trade both in live sheep and goats and their products. Both the sources of imports and destinations of exports are concentrated in a few countries. During calendar year 2003, the United States exported 172,726 head of sheep valued at $10.273 million (see table 2). Most exports were to Mexico (170,595 head). Other sheep markets were Ecuador (878 head), Trinidad and Tobago (463 head), Dominican Republic (277 head), Canada (257 head), Netherlands (233 head), Venezuela (15 head) and Japan (8 head). The United States also exported 29,579 goats valued at $1.615 million in 2003. The primary importers were Mexico (25,202 head), China (4,112 head), Canada (133 head), Netherlands (81 head), and Jamaica (33 head) in 2003. Other destinations included Grenada (6 head), Philippines (6 head), and Japan (6 head).

[1] USDA/NASS, *Sheep and Goats*, January 2004.

[2] USDA/NASS, *Meat Animals Production, Disposition, and Income: 2003 Summary,* April 2004.

[3] USDA/NASS, *Livestock Slaughter: 2003 Summary,* March 2004.

TABLE 2.—*Sheep and Goats: Imports and Exports, 2003*

| Item | Number of imports | Value of imports (in millions) | Number of exports | Value of exports (in millions) |
|---|---|---|---|---|
| Sheep | 67,778 | $7.106 | 172,726 | $10.273 |
| Goats | 7,453 | 0.578 | 29,579 | 1.615 |
| Total | 75,231 | 7.684 | 202,305 | 11.888 |

SOURCE: World Trade Atlas, Global Trade Information Services, Inc., U.S. Edition, March 2004.

In 2003, the United States imported 67,778 sheep valued at $7.106 million. All sheep imports in 2003 were from Canada (67,766 head) and Australia (12 head). Additionally, the United States imported 7,453 goats valued at $0.578 million in 2003, of which 5,967 were from Canada and 1,486 were from Australia. In 2003, the United States imported 170.9 million pounds of sheep and goat meat, valued at $353 million and exported 7.4 million pounds of sheep and goat meat valued at $7.9 million. Most lamb and mutton imports came from Australia and New Zealand.

*Cost-Benefit Analysis*

This proposed rule, if implemented, could result in additional administrative burdens and costs for livestock facilities handling sheep or goats in interstate commerce in order to qualify for and maintain their status as approved livestock facilities.

There are currently 126 facilities that handle sheep and goats moving in interstate commerce. These facilities would have to provide access to accredited veterinarians, State representatives, and APHIS representatives, as well as comply with certain notification requirements with respect to livestock known to be infected, exposed, or suspect, or that show signs of being infected with a communicable disease. Such facilities also would have to keep State animal health officials and APHIS informed of upcoming sale days at the facility. Some of the livestock facilities covered by this rule, if implemented, are already subject to these requirements as approved livestock facilities handling other classes of livestock.

To be approved, such livestock facilities also would have to follow certain identification, recordkeeping, and handling practices with respect to sheep or goats under their control as provided in 9 CFR parts 71 and 79. Documents such as weight tickets, sales slips, and records of origin, identification, and destination relating to livestock at the facility would have to be maintained by the facility for a period of 5 years. Some of these requirements are already provided for elsewhere in the regulations, and thus would not represent a new burden. However, any new paperwork and administrative burdens may result in additional costs to facility operators who find it necessary to adjust their operations to meet the new requirements. We do not expect that this will be a significant issue for most facilities.

The livestock facility and equipment would have to be maintained in a state of good repair. Chutes, pens, alleys, and sales rings would have to be well-constructed and well-lighted for the inspection, identification, vaccination, testing and branding of livestock. Electrical outlets would have to be provided at the chute area for branding purposes. The facility, including all yards, docks, pens, alleys, sale rings, chutes, scales, means of conveyance and their associated equipment would have to be maintained in a clean and sanitary condition. The operator of the facility would be responsible for maintaining an adequate supply of disinfectant and serviceable equipment for cleaning and disinfection. Meeting these standards could entail additional costs for some livestock facilities seeking to qualify as approved livestock facilities. However, we do not expect this to be a significant issue as a number of these conditions represent good business practices that most facilities already follow. In addition, some of these facilities would already be complying with these conditions as approved livestock facilities handling other classes of livestock. So the additional changes in this proposed rule should not have a significant effect on facilities conducting their businesses.

In addition, as a condition of approval, reactor, suspect, exposed, scrapie high-risk, or scrapie-positive livestock would have to be held in quarantined pens apart from all other livestock at the facility. The quarantined pens in which such animals are held would have to be clearly marked and would have to be cleaned and disinfected before being used to hold other animals not affected with diseases. The quarantined pens also would have to have proper drainage and be constructed of materials that are substantially impervious to moisture and able to withstand continued cleaning and disinfection. The regulations in § 71.20(a)(5) already require that approved livestock facilities hold any reactor, suspect, or exposed livestock in quarantined pens apart from all other livestock at the facility; facilities handling sheep or goats that do not have quarantined pens would likely incur a one time capital investment of about $3,000 to $5,000 to install such a pen. Otherwise, we expect that the number of reactor, suspect, exposed, scrapie high-risk, or scrapie-positive livestock handled by approved livestock facilities to be very small, and thus quarantining of such animals should not have a significant effect on facility operations or economic activity.

Producers who are engaged in intrastate and interstate marketing also may pay higher consignment fees as approved livestock facilities pass their increased costs of providing services to affected producers. Other costs to producers of this proposed action could result for those animals requiring special handling at approved livestock facilities.

This proposal, if implemented, could result in a small increase in the time that APHIS and State representatives would spend monitoring livestock facilities. In those cases where a facility is already operating as approved livestock facility for other classifications of livestock, and APHIS or State representatives (as opposed to an accredited veterinarian) are already on site, the addition of sheep and goats to the classifications of livestock covered by the agreement is unlikely to substantially increase the workload for those representatives. In those cases where a facility handling sheep and goats is not already an approved livestock facility, APHIS or State representatives are also present in order to monitor compliance with the identification requirements of the scrapie regulations in part 79. Thus, we believe that any additional monitoring responsibilities on the part of State or Federal representatives that may result

from implementation of this proposed rule could be handled by existing staff.

In spite of the potential burdens to facility operators and producers, we believe that the long-term avoided costs of coping with losses associated with scrapie by the U.S. sheep and goat industry far exceed the potential costs of this proposed rule. This includes the avoidance of those veterinary and associated costs for managing scrapie-affected flocks. A recent agency estimate showed that scrapie costs the U.S. sheep industry about $24 million per year in direct losses. This includes an estimated $10 million in lost breeding stock and embryo sales, $10.5 million in disposal costs for offal, and $2.8 million in lost meat sales and of bone meal sales from non-federally inspected plants.

Accelerating the eradication of scrapie in the United States also could facilitate the U.S. sheep and goat industry to once again become competitive both in the domestic and global market, particularly in the export of live sheep and goats. Currently, producers in countries such as Australia and New Zealand have a competitive advantage over U.S. producers, based in part on the absence of scrapie in those countries. The achievement of ''scrapie-free'' status in the United States could neutralize the competitive advantage of such countries.

Since both actual product quality as well as purchaser's perception of quality contribute to continued market acceptance, efforts to eradicate scrapie and secure the health of U.S. sheep and goats will continue to serve the economic interests of the industry and the Nation.

This proposed rule should not affect the interstate flow of sheep and goats. The interstate movement of sheep and goats is important as it reduces interstate price differences faced by consumers of livestock products and it allows movement of sheep and goats from areas of surplus to areas of deficit. A majority of sheep and goats moving across State lines are slaughter animals. Although we do not have specific data, based on our observation of livestock markets and the sheep and goat industry, we believe that most of these slaughter animals move directly to the slaughterhouse and bypass the types of livestock facilities that are the subject of this proposed rule. In addition, the operators of livestock facilities that agree to handle animals affected by scrapie would be most impacted under this proposed rule. However, the number of sheep or goats affected by scrapie and handled by these livestock facilities is likely to be very small. So this proposed rule should not pose a significant burden on operators of livestock facilities or producers so as to reduce interstate commerce or retard economic activity.

*Initial Regulatory Flexibility Analysis*

Agencies are required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to evaluate the potential economic effects of proposed rules on small entities. We do not have enough information to fully evaluate the potential effect of this proposed rule on small entities. As such, we are inviting comments addressing this issue. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule, and if there are any special issues relating to the business practices of these small entities that would make them particularly different from larger firms in their ability to comply with this proposed rule. We also are interested whether any other costs may result from implementation of this proposed rule that are not discussed in this analysis. Based on what information we have, we have made some initial conclusions.

The changes in this proposed rule would directly affect livestock facilities that handle sheep or goats in interstate commerce. This would include stockyards, livestock markets, buying stations, concentration points, or any other premises under State or Federal veterinary supervision where sheep or goats have been assembled. Producers of sheep or goats also could be affected by the proposed rule if livestock facilities pass their increased costs of providing services to affected producers.

The Small Business Administration (SBA) has established guidelines for determining which types of firms are to be considered small under the Regulatory Flexibility Act. Facilities that handle livestock such as stockyards, livestock markets, buying stations, concentration points, or any other premises under State or Federal veterinary supervision where livestock are assembled are considered small if they have 100 or fewer employees. There are currently about 1,300 livestock facilities that handle cattle and calves, swine, or sheep and goats moving in interstate commerce. Of this total, about 126 handle sheep or goats. Of those livestock facilities that handle sheep and goats, only 1 facility may be considered to be large and all other facilities are small entities of 100 employees or less.

Livestock facilities that are considered small entities would have to meet the same standards as other larger firms. This would include following certain identification, recordkeeping, and handling practices with respect to sheep or goats. Some of these requirements are already provided in part 79 of the regulations, and thus would not represent a new burden. In addition, a certain number of these facilities already comply with many of the conditions in this proposed rule in operating as approved livestock facilities for other classes of livestock.

We considered the feasibility of exempting small entities from some or all of the requirements in this proposed rule or establishing differing compliance or reporting requirements that take into account the resources available to small entities. However, one of the aims of an effective national program to control and eradicate scrapie is to establish uniform standards that will be followed by all livestock facilities handling sheep or goats in interstate commerce. Programs relating to disease surveillance and control do not lend themselves to different compliance standards based on the size of the entity subject to regulation. Also, the requirements in part 79 pertaining to identification, recordkeeping, and handling of sheep and goats make no distinction as to the size of producer or other livestock facility handling the animals.

As discussed above, producers who are engaged in intrastate and interstate marketing may be indirectly affected by this proposed rule if they have to pay higher consignment fees as livestock facilities pass their increased costs of providing services. Other costs to producers of this proposed action could result for those animals requiring special handling at approved livestock facilities. An establishment engaged in sheep or goat production is considered small if it has annual sales of less than $750,000. As discussed previously, the vast majority of sheep and goat producers would be considered small entities based on such criteria. Based on our initial analysis, the potential costs to sheep and goat producers considered small entities should not be significant.

In sum, it is reasonable to expect that both small and large entities would benefit from this proposed rule, which would strengthen scrapie control programs resulting in long-term avoided costs of coping with market losses associated with scrapie to the U.S. sheep and goat industry, currently estimated as high as $24 million per year in direct losses to the U.S. sheep industry alone. We expect any costs to operators of livestock facilities or to producers to be more than offset by the added benefits to the industry at large

in providing a more effective scrapie eradication program.

This proposed rule would entail information collection requirements. These requirements are described in this document under the heading ''Paperwork Reduction Act.''

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

An environmental assessment has been prepared for this proposed rule. The assessment provides a basis for the conclusion that Animal and Plant Health Inspection Service approval of livestock facilities that handle sheep or goats in interstate commerce under the conditions specified in this proposed rule would not have a significant impact on the quality of the human environment.

The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this docket). In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–094–1. Please send a copy of your comments to: (1) Docket No. 00–094–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing that livestock facilities that handle sheep or goats in interstate commerce would have to meet certain standards and follow certain operating practices in order to be approved by us. Complying with the proposed standards and other conditions described in this proposed rule would necessitate the use of several information collection activities, including (1) executing a livestock facility agreement that provides the conditions under which the facility must operate in order to be approved by us, (2) notifying an APHIS or State representative or accredited veterinarian concerning the presence of any sick animal at the facility, (3) completing an application for permit in order for the facility to release certain sheep and goats affected with scrapie, and (4) maintaining records relating to the identity of sheep handled at the facility. We note that much of the information that would be requested under the proposed rule is already being recorded by livestock facility owners/operators as part of their routine business practices. In addition, much of the information requested is currently required by our regulations in 9 CFR parts 54, 71, and 79, and is thus already being provided by many of the respondents who would be affected by the proposed regulations.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.5068226 hours per response.

*Respondents:* Owners/operators of certain livestock facilities that handle sheep or goats moving interstate, accredited veterinarians, and State animal health authorities.

*Estimated annual number of respondents:* 1,026.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 1,026.

*Estimated total annual burden on respondents:* 520 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**Government Paperwork Elimination Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**List of Subjects in 9 CFR Part 71**

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 71 as follows:

## PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 would continue to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. Section 71.1 would be amended by revising the definitions of *Accredited Veterinarian, Area Veterinarian in Charge, interstate commerce, livestock, State, State animal health official, State representative* and by adding, in alphabetical order, new definitions for *consistent States and inconsistent States,* to read as follows:

**§ 71.1 Definitions.**

* * * * *

*Accredited veterinarian.* A veterinarian who is approved by the Administrator, in accordance with part 161 of this chapter, to perform official animal health work of the Animal and Plant Health Inspection Service specified in subchapters A, B, C, and D of this chapter; and to perform work required by cooperative State-Federal disease control and eradication programs.

* * * * *

*Area veterinarian in charge.* The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

* * * * *

*Consistent States.* Those States listed as consistent States in § 79.1 of this subchapter because they meet certain standards, as provided in § 79.6 of this subchapter, for conducting an active State scrapie program involving the identification of scrapie in sheep and goats for the purpose of controlling the spread of scrapie.

* * * * *

*Inconsistent States.* Those States not included in the list of consistent States appearing in § 79.1 of this subchapter.

* * * * *

*Interstate commerce.* Trade, traffic, transportation, or other commerce between a place in a State and any place outside of that State, or between points within a State but through any place outside of that State.

* * * * *

*Livestock.* Horses, cattle, bison, cervids, camelids, sheep, goats, and swine.

* * * * *

*State.* Any of the 50 States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and any territories and possessions of the United States.

*State animal health official.* The State official responsible for livestock and poultry disease control and eradication programs.

*State representative.* An individual employed in animal health work by a State or a political subdivision thereof and authorized by such State or political subdivision to perform the function involved.

* * * * *

3. Section 71.3 would be amended by adding a new paragraph (c)(5) to read as follows:

**§ 71.3 Interstate movement of diseased animals and poultry generally prohibited.**

* * * * *

(c) * * *

(5) Sheep or goats designated, with regard to scrapie, as exposed animals, high-risk animals, suspect animals, or scrapie-positive animals, as those terms are defined in part 79 of this chapter, may be moved interstate only in accordance with part 79 of this chapter.

* * * * *

**§ 71.6 [Amended]**

4. In § 71.6, paragraph (a), the first sentence would be amended by adding the word ''goats,'' immediately after the word ''sheep,''.

**§ 71.19 [Amended]**

5. In § 71.19, paragraph (d), the introductory text would be amended by removing the words ''Area Veterinarian in Charge'' and adding the words ''area veterinarian in charge'' in their place.

6. Section § 71.20 would be amended as follows:

a. In paragraph (a)(3), by adding the number ''79,'' immediately after the number ''78,''.

b. In paragraph (a)(4), by adding the words ''high-risk'' immediately after the word ''exposed,''.

c. By revising paragraphs (a)(5), (a)(6), (a)(7), and (a)(11) to read as set forth below.

d. In paragraph (a)(8), by adding the number ''79,'' immediately after the number ''78,''.

e. In paragraph (a)(12), by removing the words ''or suspect, or exposed'' and adding in their place the words ''suspect, exposed, high-risk, or scrapie-positive''.

f. By redesignating paragraphs (a)(17) through (a)(20) as paragraphs (a)(18) through (a)(21), respectively, and adding a new paragraph (a)(17) before the undesignated center heading ''*Approvals*'' to read as set forth below.

g. By revising newly redesignated paragraph (a)(18) to read as set forth below.

**§ 71.20 Approval of livestock facilities.**

* * * * *

(5) Any reactor, suspect, exposed, high-risk, or scrapie-positive livestock shall be held in quarantined pens apart from all other livestock at the facility. This requirement shall not apply to sheep or goats designated under 9 CFR part 79 as exposed or high-risk animals that will be moved directly to slaughter in accordance with 9 CFR parts 71 and 79.

(6) No reactor, suspect, exposed, high-risk, or scrapie-positive livestock, nor any livestock that show signs of being infected with any infectious, contagious, or communicable disease, may be sold at or moved from the facility, except in accordance with 9 CFR parts 71, 75, 78, 79, and 85.

**Records**

(7) Documents such as weight tickets, sales slips, and records of origin, identification, and destination that relate to livestock that are in, or that have been in, the facility shall be maintained by the facility for a period of 2 years, or for a period of 5 years in the case of sheep or goats. APHIS representatives and State representatives shall be permitted to review and copy those documents during normal business hours.

* * * * *

(11) Quarantined pens shall be clearly labeled with paint or placarded with the word ''Quarantined'' or the name of the disease of concern, and shall be cleaned and disinfected in accordance with 9 CFR part 71, as well as 9 CFR 54.7(e)(2) if the disease of concern is scrapie, before being used to pen livestock that are not reactor, suspect, exposed, high-risk, or scrapie-positive animals.

* * * * *

(17) Sheep and goats:

—This facility will handle breeding sheep or goats: [*Initials of operator, date*]

—This facility will handle slaughter sheep or goats: [*Initials of operator, date*]

—This facility will handle scrapie-exposed or high-risk sheep or goats: [*Initials of operator, date*]

—This facility will handle scrapie-exposed or high-risk sheep or goats for slaughter only: [*Initials of operator, date*]

—This facility will not handle scrapie-exposed, high-risk, suspect, or scrapie-positive sheep or goats, nor permit such animals to enter the facility: [*Initials of operator, date*]

(i) All sheep and goats must be received, handled, and released by the facility only in accordance with 9 CFR parts 71 and 79.

(ii) All sheep and goats at the facility must be officially identified and relevant records relating to those

identified animals must be maintained by the facility operator, as required under 9 CFR part 79.

(iii) The identity of sheep and goats from consistent States and inconsistent States must be maintained by the facility operator.

(iv) Breeding and slaughter animals must be separated at all times so that no contact will occur.

(v) Any breeding sheep or goats that are designated, with regard to scrapie, as exposed, high risk, suspect, or scrapie-positive animals, or any slaughter sheep or goats that are designated as scrapie-positive or suspect animals, must be held in quarantined pens while at the facility.

(vi) Any sheep or goats that are designated as scrapie-exposed or high-risk animals must be consigned from the facility only in accordance with 9 CFR part 79.

(vii) Any sheep or goats that are designated as scrapie-positive or suspect animals must be reported immediately by the facility operator to a State representative, an APHIS representative, or an accredited veterinarian. Such animals may be released or consigned from the facility only if accompanied by a permit issued by a State, an APHIS representative, or an accredited veterinarian, allowing movement of the animals to an approved disposal site or research facility in accordance with 9 CFR parts 71 and 79.

**Approvals**

(18) Request for approval:

I hereby request approval for this facility to operate as an approved livestock facility for the classes of livestock indicated in paragraphs (14) through (17) of this agreement. I acknowledge that I have received a copy of 9 CFR parts 71, 75, 78, 79, and 85, and acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement and the applicable provisions of 9 CFR parts 71, 75, 78, 79, and 85 constitutes a basis for the withdrawal of this approval. [*Printed name and signature of operator, date of signature*]

* * * * *

Done in Washington, DC, this 20th day of August, 2004.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 04–19516 Filed 8–25–04; 8:45 am]

BILLING CODE 3410–34–P

## FEDERAL ELECTION COMMISSION

## 11 CFR Part 100

**[NOTICE 2004–12]**

## Rulemaking Petition: Exception for the Promotion of Political Documentary Films From ''Electioneering Communications''

**AGENCY:** Federal Election Commission.

**ACTION:** Rulemaking petition: notice of availability.

**SUMMARY:** On July 20, 2004, the Commission received a Petition for Rulemaking (''Petition'') from Mr. Robert F. Bauer (''Petitioner''). The Petition asks the Commission to revise its regulations by exempting the promotion of political documentary films that may otherwise meet the requirements of an electioneering communication within the meaning of the Federal Election Campaign Act of 1971, as amended (the ''Act''). The Petition is available for inspection in the Commission's Public Records Office, through its Faxline service, and on its Web site, *http://www.fec.gov.* Further information is provided in the supplementary information that follows.

**DATES:** Statements in support of, or in opposition to, the Petition must be submitted on or before September 27, 2004.

**ADDRESSES:** All comments should be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be send to *ECADSNOA@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Commission will post public comments on its Web site.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Amy L. Rothstein, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Federal Election Commission (''Commission'') has received a Petition for Rulemaking from Mr. Robert F. Bauer, acting on his own behalf and not on behalf of any client or other interested party. Petitioner asks the Commission to revise 11 CFR 100.29(c) to exempt from the term ''electioneering communications'' any communication appearing in a promotion for a political documentary film ''by corporations and other entities established and operating for such purpose in the ordinary course of their businesses,'' provided that the promotion does not ''promote, support, attack or oppose'' a candidate for federal office within the meaning of 2 U.S.C. 431(20)(A)(iii). Petitioner seeks to have any such protections also apply to the promotion, in the ordinary course of business, of ''books, plays, and other forms of political expression that may involve references to Federal candidates.''

The Commission seeks comments on whether the Commission should initiate a rulemaking on ''electioneering communications'' and on whether there are other issues regarding the electioneering communications rules that should also be addressed in a rulemaking at this time.[1]

Copies of the Petition are available for public inspection at the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday though Friday between the hours of 9 a.m. and 5 p.m., and on the Commission's Web site, *http://www.fec.gov.* Interested persons may also obtain a copy of the Petition at any time by dialing the Commission's Faxline service at (202) 501–3413 and requesting document # 257.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: August 20, 2004.

**Bradley A. Smith,**

*Chairman, Federal Election Commission.*

[FR Doc. 04–19526 Filed 8–25–04; 8:45 am]

BILLING CODE 6715–01–P

[1] Certain aspects of the Commission's regulations regarding electioneering communications are the subject of a pending lawsuit in the United States District Court for the District of Columbia. *Shays and Meehan* v. *FEC*, Civ. Act. 02–CV–1984.

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–135898–04]**

**RIN 1545–BD63**

## Extension of Time To Elect Method for Determining Allowable Loss

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document contains proposed regulations under section 1502 of the Internal Revenue Code of 1986. The proposed regulations extend the time for consolidated groups to elect to apply a method for determining allowable loss on a disposition of subsidiary stock, and permit consolidated groups to revoke such elections. The proposed regulations affect corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of the temporary regulations published in this issue of the **Federal Register** serves as the text of these proposed regulations.

**DATES:** Written or electronic comments must be received by November 24, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–135898–04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–135898–04), 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* (IRS and REG–135898–04).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Theresa Abell (202) 622–7700 or Martin Huck, (202) 622–7750; concerning submissions of comments, Robin Jones, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 25, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation was previously approved and reviewed by the Office of Management and Budget under control number 1545–1774. The collection of information is required to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.1502–20 in its entirety, § 1.1502–20 without regard to the duplicated loss factor, or § 1.337(d)–2T; to allow the taxpayer to reapportion a section 382 limitation in certain cases; to allow the taxpayer to waive certain loss carryovers; and to ensure that loss is not disallowed under § 1.337–2T and basis is not reduced under§ 1.337(d)–2T to the extent that the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset.

This collection of information is modified with respect to §§ 1.1502–20T and 1.1502–32T. Regarding § 1.1502–20T, the collection of information also is necessary to allow the common parent of the selling group to reapportion a separate, subgroup or consolidated section 382 limitation when the acquiring group amends its § 1.1502–32(b)(4) election. With respect to § 1.1502–32T, the collection of information also is necessary to allow the acquiring group to amend its previous § 1.1502–32(b)(4) election, so that it may use previously waived losses of its subsidiary.

The collection of information is required to obtain a benefit. The likely respondents are corporations that file consolidated income tax returns.

*Estimated total annual reporting and/or recordkeeping burden:* 36,720 hours.

*Estimated average annual burden per respondent:* 2 hours.

*Estimated number of respondents:* 18,360.

*Estimated annual frequency of responses:* Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

### Background and Explanation of Provisions

Temporary regulations in the rules and regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) relating to section 1502. The temporary regulations extend the time for consolidated groups to elect to apply a method for determining allowable loss on a disposition of subsidiary stock, and permit consolidated groups to revoke such elections. The temporary regulations affect corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of those regulations serves as the text for these proposed regulations. The preamble to the temporary regulations explains the amendments and these proposed regulations.

### 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 assessment is not required. It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations provide relief to consolidated groups by extending the time in which a group may make, or allowing a group to revoke, certain

elections of methods for determining allowable loss. In addition, members of consolidated groups are generally large corporations rather than small businesses. Therefore, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Nevertheless, the IRS and Treasury Department request comments from small entities that believe they might be adversely affected by these regulations. 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 the impact of these regulations.

**Comments and Public Hearing**

Before the 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 IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying. A public hearing may be scheduled. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal authors of these regulations are Theresa Abell and Martin Huck of the Office of Associate Chief Counsel (Corporate). 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 1.1502–20 is amended by:

1. Revising the first sentence of paragraph (i)(4).
2. Redesignating paragraph (i)(6) as (i)(7).
3. Adding new paragraph (i)(6).

The revisions and addition read as follows:

**§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.**

* * * * *

(i) * * *

(4) [The text of proposed § 1.1502–20(i)(4) is the same as the text of § 1.1502–20T(i)(4) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(6) [The text of proposed § 1.1502–20(i)(6) is the same as the text of § 1.1502–20T(i)(6) published elsewhere in this issue of the **Federal Register**.]

**Par. 3.** Section 1.1502–32(b)(4)(vii)(C) is amended by removing the language ''May 7, 2003'' and adding the language ''August 25, 2004'' each time it appears.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04–19477 Filed 8–25–04; 8:45 am]

BILLING CODE 4830–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[R05–OAR–2004–IN–0003; FRL–7806–6]**

## Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve Indiana's August 6, 2004, submittal of revised mobile emission inventories and 2005 and 2007 motor vehicle emissions budgets (MVEBs) which have been developed using MOBILE6, an updated model for calculating mobile emissions of ozone precursors. These inventories and associated motor vehicle emissions budgets are part of the 1-hour ozone attainment plan approved for the Northwest Indiana area. The Northwest Indiana area consists of Lake and Porter Counties in Indiana. The State's submittal meets a commitment to revise and resubmit the MVEBs using MOBILE6 methods within two years following the release of MOBILE6 provided that transportation conformity is not determined without adequate MOBILE6-based MVEBs during the second year.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. 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 on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before September 27, 2004.

**ADDRESSES:** Submit comments, identified by Docket ID No. R05–OAR–2004–IN–0003 by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

E-mail: *bortzer.jay@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. R05–OAR–2004–IN–0003. 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 Web site 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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*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.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Patricia Morris, Environmental Scientist, at (312) 353–8656 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Patricia Morris, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656. *morris.patricia@epa.gov*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does This Action Apply to Me?*

This action is rulemaking on a non-regulatory planning document intended to ensure the attainment of the 1-hour ozone air quality standard in the Northwest Indiana Area. This action establishes MVEBs for Northwest Indiana that will allow transportation planning to proceed.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

## II. Additional Information

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at EDOCKET or in hard copy at the above address. (Please telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 Office.)

Dated: August 12, 2004.

**Steve Rothblatt,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 04–19435 Filed 8–25–04; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 04–256; FCC 04–173]**

## Attribution of Joint Sales Agreements in Local Television Markets

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission solicits comment on whether to attribute TV Joint Sales Agreements (JSAs) for purposes of applying the broadcast ownership rules. In a previous decision in this proceeding, the Commission attributed the ''brokered station'' to the ''broker'' in certain radio JSAs, but, because prior notice had not been given regarding whether to attribute TV JSAs, the Commission said that it would seek comment in the future on whether to attribute TV JSAs. This decision invites comment on whether to attribute certain TV JSAs.

**DATES:** Comment are due September 27, 2004; Reply comments are due October 12, 2004. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public and other interested parties on or before October 25, 2004.

**ADDRESSES:** Federal Communications Commission, Portals II, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Les Smith, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554; or via the internet to *Leslie.Smith@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kristy L.LaLonde@omb.eop.gov,* or via fax at (202) 395–5167.

**FOR FURTHER INFORMATION CONTACT:** Debra Sabourin, Industry Analysis Division, Media Bureau, (202) 418–0976 or *Debra.Sabourin@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Les Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Media Bureau's *Notice of Proposed Rulemaking* (*NPRM*) in MB Docket No. 04–256, FCC 04–173,

adopted July 13, 2004, and released on August 2, 2004. The full text of this *NPRM* is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, Best Company and Printing, Inc., Room CY–B402, telephone (800) 378–3160, e-mail *www.BCPIWEB.COM.* To request materials in accessible formats for people with disabilities (electronic files, large print, audio format and Braille), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

**Synopsis of Notice of Proposed Rulemaking**

1. In its *Report and Order and Notice of Proposed Rulemaking* (68 FR 46286, August 5, 2003, and 68 FR 46359, August 5, 2003) (*R&O*), arising from the third biennial review of its broadcast ownership rules, the Commission attributed the ''brokered station'' to the ''broker'' in certain radio JSAs.[1] A JSA is an agreement with a licensee of a brokered station that authorizes a broker to sell some or all of the advertising time for the brokered station in return for a fee or percentage of revenues paid to the licensee. (47 CFR 73.3555, Note 2(k)) Because the broker normally assumes much of the market risk with respect to the station it brokers, radio JSAs generally give the broker authority to hire a sales force for the brokered station, set advertising prices, and make other decisions regarding the sale of advertising time, subject to the licensee's preemptive right to reject the advertising. As a result of the Commission's decision, its attribution rules, which define what interests are counted for purposes of applying the Commission's broadcast ownership rules, now state that a party with a cognizable interest in a radio station that brokers more than 15 percent of the weekly advertising time of another radio station in the same local market is considered to have an attributable interest in the brokered station *R&O.* (47 CFR 73.3555) In this *NPRM,* the Commission invites comment on whether comparable, same-market TV JSAs should also be attributable.

2. Although the Commission attributed radio JSAs in the *R&O* it did not address TV JSAs or its other attribution rules. The biennial, now quadrennial, review requirement of section 202(h) of the Telecommunication Act of 1996 does not encompass attribution. The attribution rules merely determine what interests are cognizable under the Commission's broadcast ownership rules; they are not ownership limits in themselves. Moreover, the basis of the attribution rules differs from the statutory factors the Commission applies in the biennial reviews. The Commission addressed the attribution of radio JSAs in the *R&O* only because the issue was raised in the local radio ownership proceeding, which was incorporated into the 2002 biennial review. Since prior notice had not been given regarding the issue of whether the Commission should attribute TV JSAs, the Commission said that it would seek comment on whether to attribute TV JSAs in a future NPRM. The Commission has no reason to believe that the terms and conditions of TV JSAs differ substantively from those of radio JSAs, and, in this *NPRM*, the Commission tentatively concludes that JSAs have the same effect in local TV markets that they have in local radio markets and should be treated similarly.

3. The Commission's attribution rules seek to identify those interests in licensees that confer on their holders a degree of ''influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.''[2] Influence and control are important criteria with respect to the attribution rules because these rules define which interests are significant enough to be counted for purposes of the Commission's multiple ownership rules.

4. In its 1999 attribution proceeding, the Commission considered whether to attribute several types of business arrangements, including JSAs and TV local marketing agreements (LMAs).[3] The Commission acknowledged that same-market JSAs could raise competitive concerns but said it did not believe that such agreements conveyed a sufficient degree of influence or control over station programming or core operations to warrant attribution, adding that JSAs could promote diversity by ''enabling smaller stations to stay on the air.'' (*1999 Attribution Order*) The Commission required that JSAs be placed in the station's public inspection file, and specifically noted that it retained the discretion to conduct a public interest review of specific JSAs, if warranted, on a case-by-case basis. (*1999 Attribution Order*)

5. In 1999, the Commission distinguished JSAs from LMAs, holding that JSAs are contracts that affect primarily the sale of advertising time, as distinguished from LMAs, which may affect programming, personnel, advertising, physical facilities, and other core operations of radio stations. (*1999 Attribution Order*) Although the Commission did not adopt a rule attributing TV or radio JSAs, it did attribute same-market TV LMAs, stating that its rationale in the *1992 Radio Ownership Order* for attributing same-market radio LMAs—*i.e.*, to prevent their use to circumvent its ownership limits—applies equally to same-market TV LMAs. The Commission also repeated its concern that LMAs among stations serving the same market could undermine broadcast competition and diversity. (*1999 Attribution Order*, citing *1992 Radio Ownership Order*, 57 FR 18089, April 29, 1992) After the *1999 Attribution Order* took effect, the Commission's rules specified that a party with a cognizable interest in either a radio or a TV station that brokers more than 15 percent of the weekly broadcast time of another radio or TV station in the same local market is considered to have an attributable interest in the brokered station. (47 CFR 73.3555, Notes 2(j)(1), 2(k)(1))

6. In 2001, the Commission reopened the issue of whether to attribute radio JSAs in the Local Radio Ownership *NPRM.* (*Rules and Policies Concerning Multiple Ownership of Radio Broadcast*

[1] The *R&O* was *affirmed in part, remanded in part* in *Prometheus Radio Project* v. *F.C.C.,* 373 F.3d 372 (3rd Cir. 2004) (*Prometheus* v. *FCC*). While the court affirmed the Commission's decision to attribute JSAs, as well as other Commission decisions, it remanded a number of decisions in the biennial proceeding to the Commission for additional justification or modification. The court had earlier stayed the effectiveness of the Commission's decision pending review, and, in a separate Partial Judgment, the court continued the stay pending its review of the Commission's action on remand, over which the court retained jurisdiction.

[2] *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry*, 64 FR 59655, November 3, 1999 (*1999 Attribution Order*), *on recon.*, 66 FR 9962, February 13, 2001. For purposes of the multiple ownership rules, the concept of ''control'' is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry*, 60 FR 6483, February 2, 1995.

[3] LMAs are sometimes called time brokerage agreements, or TBAs. ''Time brokerage'' (also known as ''local marketing'') is the sale by a licensee of discrete blocks of time to a ''broker'' that supplies the programming to fill that time and sells the commercial spot announcements in it. A joint sales agreement, on the other hand, is an agreement with a licensee of a ''brokered station'' that authorizes a ''broker'' to sell advertising time for the ''brokered station.'' 47 CFR 73.3555, Notes 2(j), (k); *see also 1999 Attribution Order.*

*Stations in Local Markets*, 66 FR 63986, December 11, 2001. This proceeding was incorporated into the 2002 biennial review.) As part of its larger inquiry into possible changes to local radio ownership rules and policies, the Commission asked whether it should reconsider its blanket exemption of JSAs from attribution, and whether radio JSAs and LMAs or TBAs should be treated similarly. (66 FR 63986, December 11, 2001) In its 2002 *Ackerley* decision, the Commission interpreted the language in the *1999 Attribution Order*, in which it reserved the ability to conduct a review of specific JSAs on a case-by-case basis. It concluded that the parties' TV JSA, which was intertwined with the parties' non-attributable TBA, should be attributable due to the level of influence it permitted the broker to exercise over the brokered station's programming decisions. (*Shareholders of the Ackerley Group, Inc. (Transferor) and Clear Channel Communications, Inc. (Transferee) For Transfer of Control of the Ackerley Group, Inc., and Certain Subsidiaries,* 17 FCC Rcd. 10828, 2002.) (*Ackerley*)) In *Ackerley*, Ackerley Group, Inc. had both a TBA and a JSA with KCBA (TV). The TBA expressly limited the amount of programming to be provided under the TBA to 15 percent of the licensee's weekly programming hours, which was the permissible limit without triggering the Commission's attribution rules. However, the brokered station, under the terms of the combined agreements, did not have the right to collect advertising revenue from non-network programming not included within the 15 percent provided under the TBA, and so did not have an economic incentive to refuse programming suggestions by the broker.

7. The Commission explained in *Ackerley* that it had, in the *1999 Attribution Order*, declined to impose new rules attributing JSAs ''as long as they deal primarily with the sale of advertising time and do not contain terms that materially affect programming or other core operations of the stations such that they are substantively equivalent to LMAs.'' (*Ackerley*, 17 FCC Rcd 10842, citing *1999 Attribution Order*, 14 FCC Rcd at 12612–13) The Commission concluded in *Ackerley* that the TBA and related agreements did not provide the licensee with an economic incentive to control the 85 percent of programming not provided by the broker under the LMA. It concluded that, as a result, the agreements together were ''substantively equivalent'' to an LMA for more than 15 percent of KCBA(TV)'s weekly broadcast hours and were therefore attributable.

8. In 2003, the Commission decided to attribute radio JSAs. In the *R&O*, the Commission reiterated that the attribution rules seek to identify and include those positional and ownership interests that convey a degree of influence or control to their holder sufficient to warrant limitation under the ownership rules. Where the Commission has referred to an interest that confers ''influence'' it has viewed it as an interest that is less than controlling, but through which the holder is likely to induce a licensee to take actions to protect the interests of the holder, and where a realistic potential exists to affect a station's programming and other core operational decisions. The Commission found that the use of in-market radio JSAs may undermine its interest in broadcast competition sufficiently to warrant limitation under the multiple ownership rules.

9. Prior to 2003 the Commission distinguished JSAs from LMAs, finding that only LMAs have the ability to affect programming, personnel, advertising, physical facilities, and other core operations of stations. In the *R&O,* however, the Commission found that because the broker controls the advertising revenue of the brokered radio station, JSAs have the same potential as LMAs to convey sufficient influence over core operations of a radio station to raise significant competition concerns warranting attribution. The Commission found that the threat to competition and the potential impact on the influence over the brokered station outweighed any potential benefits that non-attribution of radio JSAs may have on the radio industry.

10. When the Commission attributed JSAs involving radio stations, it said that, where an entity owns or has an attributable interest in one or more stations in a local radio market, joint advertising sales of another station in that market for more than 15 percent of the brokered station's advertising time per week will result in counting the brokered station toward the brokering licensee's ownership limits. (47 CFR 73.3555, Note 2(k)) Additionally, attributable radio JSAs must be filed with the Commission, and placed in the public file. The Commission gave parties two years from the effective date of the new rule to terminate agreements, or otherwise come into compliance with the applicable media ownership rules. (However, if a party sells an existing combination of stations within the two year grace period, it may not sell or assign the JSA to the new owner if the JSA causes the new owner to exceed any of the Commission's ownership limits; the JSA must be terminated at the time of the sale of the stations.)

11. *In Prometheus* v. *FCC,* the Third Circuit Court upheld the Commission's decision to attribute radio JSAs. The court held that the Commission had adequately explained its change in policy with respect to attribution of radio JSAs. The court accepted ''that the Commission's determination upon 'reexamination of the issue' that the JSAs convey (and always have conveyed) a potential for influence—sufficiently rationalizes [the Commission's] decision to jettison its prior nonattribution policy and replace it with one that more accurately reflects the conditions of local markets.'' The court also held that attribution of JSAs is not a regulatory taking in violation of the Fifth Amendment. According to the court, in deciding to attribute JSAs, the Commission has not invalidated or interfered with any contracts, but has merely determined that stations subject to JSAs should, in certain circumstances, count toward the regulatory limit in determining how many stations the broker may own in a market. The court also held that stations have no vested right in the continuation of any regulatory scheme.

12. In this *NPRM,* the Commission seeks comment on whether or not to attribute TV JSAs. The Commission tentatively concludes that it should. The Commission asks for comments on the similarities and differences between TV and radio JSAs. Are there differences between TV and radio JSAs such that the Commission should not attribute TV JSAs?

13. A licensee assumes all of the market risk associated with a broadcast TV station's programming when the licensee receives all of the advertising revenue generated by a program. The assumption of all market risk provides a licensee with strong incentives to select the station's programming and oversee other core operations of the station. The Commission's experience with the *Ackerley* case suggests that TV JSAs may reduce a licensee's incentive to select programming and oversee other core operations of the station whose ad time is brokered. For example, a JSA providing a licensee with a fixed monthly fee, regardless of the advertising sales or audience share of the TV station, transfers all market risk from the licensee to the broker. With the JSA, it is the broker's profits that are directly affected by the advertising revenues generated by a program. As such, the broker has strong incentives to induce a licensee to select programming

to protect the broker's interests, and the brokered station has little incentive to resist such influence.

14. In the context of radio JSAs, the Commission found that licensees of radio stations subject to JSAs typically receive a monthly fee regardless of the advertising sales or audience share of the station and, therefore, may have less incentive to maintain or attain significant competitive standing in the market. It concluded that, because the broker controls the advertising revenue of the brokered radio station, JSAs have the potential to convey sufficient influence over core operations of a radio station to raise significant competition concerns warranting attribution. Is the same fee structure typical for TV JSAs? If not, are the incentives different and does this have implications for the Commission's decision? In this *NPRM,* the Commission seeks comment on whether broadcast TV JSAs have a similar potential to influence program selection and other core operations of a TV station.

15. Beyond the issue of potential influence by a JSA broker over a brokered station's operations, which alone may warrant attribution, the unattributable nature of JSAs could lead to the exercise of market power by brokering stations and raise related competition concerns. In the *R&O,* in addressing local TV ownership, the Commission stated, ''[o]ur competition goal seeks to ensure that for each TV market, numerous strong rivals are actively engaged in competition for viewing audiences.'' In the context of radio, JSAs raise concerns regarding the ability of broadcasters who are not in a JSA or LMA combination to compete, and may negatively affect the health of the local radio industry generally. In any given radio market, a broker may own or have an ownership interest in stations, operate stations pursuant to an LMA, or sell advertising time for stations pursuant to a JSA. Instead of stations competing with one another, the Commission, in the *R&O,* said that radio JSAs put pricing and output decisions in the hands of one firm that sells packages of time for all stations that are party to the agreement. As such, radio JSAs have the potential to lessen competition in the market. Do TV JSAs raise the same competitive concerns as radio JSAs? In situations where a party would exceed our ownership limits if a TV JSA is attributed, does the TV JSA provide the broker with the ability to exercise market power, or raise concerns regarding the ability of smaller broadcasters to compete? Is there a difference in the radio and TV markets that would justify treating TV JSAs differently from radio JSAs? What benefits and harms from JSAs have occurred in the radio context that could occur in the TV context?

16. The Commission seeks concrete information on the terms and conditions of TV JSAs. The Commission asks commenters that are parties to TV JSAs to answer the following questions, which can help us to assess the typical terms and significance of TV JSAs. What is the duration of the agreement? What terms and conditions are associated with TV JSA agreements besides advertising terms? The Commission wishes to know the nature of the other terms as well. How are the station owner and broker compensated? Are there package deals among several stations? Does the broker get involved in the operation of the station, including programming and finances, either directly or indirectly? As a practical matter, do typical TV JSAs differ from TV LMAs? Are TV JSAs also usually accompanied by program agreements, or are they mostly solely advertising agreements? What other arrangements typically occur between parties in terms of station operations or joint use of production facilities? For example, are TV JSAs often accompanied by shared services or joint services agreements? If so, what terms are involved and what services or facilities are shared? What is the impact of these attributes of JSAs and terms of these contracts on the Commission's concerns about influence or control? Are TV JSAs typically accompanied by non-attributable financial investments? If such combinations occur, what are their terms?

17. Why do parties enter into TV JSAs? What are the benefits they enjoy? Do these benefits differ from those of LMAs? What kind of efficiencies arise with TV JSAs? How are these shared among parties to the TV JSAs? What benefits accrue to the public from TV JSAs? The Commission has seen TV JSA agreements that are accompanied by non-attributable TV LMAs, sometimes involving a situation where a stronger station provides local news programming to a weaker station in the market as part of the agreements. This may enable such stations to provide news that they were not able to provide previously. Is this a frequent occurrence and, if so, what impact should it have on our decision? What effect, if any, might attribution of TV JSAs have on the digital transition?

18. What impact do TV JSAs have on competition? What are the disadvantages of having a TV JSA? Under what circumstances, if any, should the interest of the broker/JSA holder be held attributable? The Commission particularly asks station owners who compete with stations that are parties to TV JSAs, as well as other commenters, to speak to the effects of any TV JSAs in their market.

19. If the Commission does decide to attribute TV JSAs, are there any compelling reasons why the Commission should not apply the existing radio JSA attribution guidelines, including the filing requirements, to TV JSAs? If a rule similar to the radio JSA attribution rule is applied to TV JSAs, should the Commission use the fifteen percent benchmark that it used in the radio context, or is some other percentage more appropriate? Alternatively, should TV JSAs be examined only on a case-by-case basis, and be attributed only if their likely degree of influence is similar to that of an LMA, as in *Ackerley*?

20. The commission did not grandfather existing radio JSAs. Parties having existing, attributable JSAs that would cause them to exceed relevant ownership limits were required to file a copy with the Commission, and were given two years from the effective date of the R&O to terminate those JSAs or otherwise come into compliance with the local radio ownership rules. Should these same transition provisions apply to TV JSAs? What effects, if any, should JSAs have on the renewal expectancy of TV stations? Information contained in the parties' comments is essential to the Commission's assessment of whether to grandfather existing TV JSAs in the event they are deemed attributable, and the form this grandfathering should take. Parties to existing JSAs are the best source of this information. It is critical that the Commission be provided the information it needs to make a reasoned decision, and to fashion appropriate grandfathering rights, if any, in the event it deems JSAs attributable. For parties to TV JSAs, the Commission asks that the licensee of the brokering station and/or the licensee of the brokered station include the information described above in their comments, along with any other information that they think is relevant.

21. Finally, while this *NPRM* concerns TV JSAs, the Commission notes that TV LMAs entered into before November 5, 1996, were grandfathered until the conclusion of the 2004 biennial review of the broadcast ownership rules. As part of that review, the Commission was to reevaluate these grandfathered TV LMAs, on a case-by-case basis, using specified factors, to determine whether they should continue to be grandfathered. (*Review of the Commission's Regulations*

*Governing TV Broadcasting, TV Satellite Stations Review of Policy & Rules,* 64 FR 54225, October 6, 1999, *clarified in Memorandum Opinion & Second Order on Reconsideration,* 66 FR 9039, February 6, 2001) On January 22, 2004, President Bush signed into law the Appropriations Act. (Consolidated Appropriations Act, 2004, Public Law 108–199, section 629, 118 Stat. 3, 2004) Section 629 of the Appropriations Act amends section 202(h) of the Telecommunications Act of 1996, modifying the biennial review requirement of the 1996 Act to a quadrennial review requirement. According to the amended statute, the next ownership review will commence in 2006. Since the Commission will not undertake an ownership review in 2004, it invites comment as to whether it should nonetheless commence the reevaluation of the grandfathered LMAs in 2004 or postpone it till the next quadrennial ownership review in 2006.

**Administrative Matters**

22. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

23. *Comments and Reply Comments.* Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on the notice of proposed rulemaking on or before September 27, 2004, and reply comments on or before October 12, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). All comments should reference MB Docket No. 04–256.

24. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 2002. 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.

25. Parties must also serve either one copy of each filing via e-mail or two paper copies to Best Copy and Printing, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 488–5300, or via email to *fcc@bcpiweb.com.* In addition, parties should serve one copy of each filing via email or three paper copies to Brenda Lewis, 445 12th Street, SW., 2–C266, Washington, DC 20554. Parties should also serve one copy of each filing via email or one paper copy to Debra Sabourin, Media Bureau, 445 12th Street, SW., 2–C165, Washington, DC 20554.

26. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents also will be available electronically from the Commission's Electronic comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

27. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, (*See* 5 U.S.C. 603) the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Notice of Proposed Rulemaking.* The IRFA is set forth full in the full text of this *NPRM.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM,* and they should have a separate and distinct heading designating them as responses to the IRFA.

28. *Paperwork Reduction Act.* This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due October 25, 2004. Comments should address: (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 estimates; (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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–XXXX.

*Title:* Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets, NPRM, MB Dock. No. 04–256, FCC 04–173.

*Form Number:* N.A.

*Type of Review:* New collection.

*Respondents:* Business or other for profit entities.

*Estimated Number of Respondents:* 1,360.

*Estimated Time Per Response:* 1 hour.

*Frequency of Response:* 1 time.

*Estimated Total Annual Burden:* 1,360 hours.

*Estimated Total Annual Costs:* 0.

*Privacy Act Impact Assessment:* No impacts.

*Needs and Uses:* The data would be used by the Commission to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be best served by grant of the application. The proposed filing requirements would also help to determine whether the applicant and/or filer is in compliance with the Commission's multiple ownership rules.

**Ordering Clauses**

29. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(A), 154(I), 303, 307, 309, AND 310, and section 202(h) of the Telecommunications Act of 1996, the *Notice of Proposed Rulemaking* is adopted.

30. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act. (*See* 5 U.S.C. 603(a).)

**Initial Regulatory Flexibility Analysis**

31. As required by the Regulatory Flexibility Act (RFA),[4] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

**Need for, and Objectives of, the Proposed Rules**

32. The Commission, in a *Report and Order and Notice of Proposed Rulemaking* (*R&O*), arising form the third biennial review of its broadcast ownership rules, adopted a rule attributing the ''brokered station'' to the ''broker'' in certain radio joint sales agreements (JSAa). A JSA is an agreement with a licensee of a ''brokered station'' in return for a fee paid to the licensee. The Commission's attribution rules seek to identify those interests in licensees that confer on their holders a degree of ''influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.'' Influence and control are important criteria with respect to the attribution rules because the rules define which interests are significant enough to be counted for purposes of the Commission's multiple ownership rules.

33. In the *R&O*, the Commission decided to attribute radio JSAs but found the issue as it relates to TV stations was beyond the scope of the proceeding. In extending the attribution rule to include radio JSAs, the Commission found that the use of in-market radio JSAs may undermine out interest in broadcast competition sufficiently to warrant limitation under the multiple ownership rules. Accordingly, in the *R&O*, the Commission revised the attribution rules, which define what interests are counted for purposes of applying the Commission's media ownership rules, to state that a party with a cognizable interest in a radio station that brokers more than 15 percent of the weekly advertising time of another radio station in the same local market is considered to have an attributable interest in the brokered station. These new rules have been stayed. The *NPRM* invites comment on whether same-market TV JSAs should also be attributable under the same terms. The *NPRM* also invites comment on whether the factors that led the Commission to attribute radio JSAs apply as well in the context of TV JSAs. For example, the Commission asks whether TV JSAs have a similar potential to influence core operations of the brokered TV station and whether TV JSAs raise similar competitive concerns as radio JSAs.

**Legal Basis**

34. This *NPRM* is adotped pursuant to sections 1, 2(a), 4(i), 303, 307, 309, 310, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, and section 202(h) of the Telecommunications Act of 1996.

**Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

35. 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 defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity'' under Section 3 of the Small Business Act. 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 SBA.

36. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which the rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

37. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of June 26, 2004, about 860 (68%) of the 1,270 commercial television stations in the United States have revenues of $12 million or less. The Commission notes, however, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimates, therefore, likely overstate the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which these estimates are based do not include or aggregate revenues from affiliated companies.

[4] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

**Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

38. The *NPRM* invites comment as to whether, if the Commission adopts a rule attributing same-market TV JSAs, it should adopt a requirement that attributable TV JSAs must be filed with the Commission.

**Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

39. 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.

40. The Commission invites comment on the options of leaving TV JSAs unattributable, attributing same-market TV JSAs under certain circumstances or examining TV JSAs on a case-by-case basis. The Commission tentatively concludes that it should attribute TV JSAs. The *NPRM*, however, invites comment on the various harms and benefits of TV JSAs, including whether TV JSAs may hinder the ability of smaller broadcasters and broadcasters who are not in a JSA to compete. The Commission has previously recognized the JSAs can have benefits. For example, the Commission, in the *Report and Order in MM Docket Nos. 94–150, 92–51, and 87–154* (64 FR 50622, September 17, 1999), while acknowledging concern with the possible competitive consequences of business agreements such as JSAs, noted that ''some JSAs may actually help promote diversity by enabling smaller stations to stay on the air.'' Also, the *NPRM* refers to JSAs accompanied by non-attributable LMAs, sometimes involving a situation where a stronger station provides local news programming to a weaker station in the market as part of the agreements and allowing such stations to provide news that they were not able to provide previously. The *NPRM* invites comment on whether this is a frequent occurrence and if so, what impact it should have on the Commission's decision. The Commission also invites comment on the impact of attribution of TV JSAs on the digital transition.

41. Finally, the *NPRM* considers whether, if TV JSAs are made attributable, the Commission should grandfather existing TV JSAs. As discussed in the *NPRM,* the *R&O* did not grandfather radio JSAs, but gave licensees two years from the effective date of the *R&O* to terminate those JSAs or otherwise come into compliance with the Commission's ownership rules. The *NPRM* invites comment on whether the same provisions should apply in the context of TV JSAs. The Commission invites comment on the effects of the alternatives and proposals in the *NPRM* on small businesses.

**Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

42. None.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–19468 Filed 8–25–04; 8:45 am]

**BILLING CODE 6712–01–M**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 040809233–4233–01; I.D.080304B]**

**RIN 0648–AR55**

## Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery and Northeast Multispecies Fishery; Framework 16 and Framework 39

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement concurrently Framework 16 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP) and Framework 39 to the Northeast Multispecies FMP (Multispecies FMP) (Joint Frameworks) developed by the New England Fishery Management Council (Council). The Joint Frameworks would establish Scallop Access Areas within Northeast (NE) multispecies Closed Area I (CAI), Closed Area II (CAII) and the Nantucket Lightship Closed Area (NLCA). The NE multispecies closed areas are currently closed year-round to all fishing that is capable of catching NE multispecies, including scallop fishing. Measures are proposed to allow the scallop fishery to access the scallop resource within the NE multispecies closed areas, and ensure that NE multispecies catches by scallop vessels are consistent with the Multispecies FMP. The Joint Frameworks would also revise the Essential Fish Habitat (EFH) closed areas implemented under Amendment 10 to the Scallop FMP in order to make the areas consistent with the EFH closures under the Multispecies FMP, as established by Amendment 13 to the Multispecies FMP.

**DATES:** Comments must be received at the appropriate address or fax number (*see* **ADDRESSES**) by 5 p.m., local time, on September 10, 2004.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Joint Frameworks 16/39.'' Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments submitted via e-mail or internet should be sent to *ScallopAR55@noaa.gov*. Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted to the RA at the address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Copies of the Joint Frameworks, their Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

**FOR FURTHER INFORMATION CONTACT:** Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

The Joint Frameworks were adopted by the Council on February 24, 2004. The Council initially submitted the Joint Frameworks and associated analyses on April 20, 2004, and a final revised submission was provided to NMFS on July 2, 2004. The Joint Frameworks were

developed to establish Scallop Access Areas within the NE multispecies closed areas (CAI, CAII, and NLCA). The regulations that govern these NE multispecies closed areas currently prohibit fishing for scallops to prevent NE multispecies mortality, as scallop gear is capable of catching NE multispecies. The Scallop Access Areas will allow controlled access to these areas in order to harvest appropriately from the large biomass of scallops in the NE multispecies closed areas.

Amendment 10, which was implemented by a final rule published June 23, 2004 (69 FR 35194) contemplated that a controlled access program for the NE multispecies closed areas would be incorporated into the area rotation program through scheduled openings of the areas. However, Amendment 10 did not include the detailed management measures, particularly with respect to NE multispecies bycatch, that were necessary to implement the access program under Amendment 10. In addition, in order to allow controlled access by scallop vessels to the NE multispecies closed areas, complementary action was necessary under the Multispecies FMP. In order to ensure that the management measures included in Amendment 13 to the Multispecies FMP (Amendment 13) and their environmental impacts were considered under the action to allow scallop fishing in the NE multispecies closed areas, the Council delayed action on the Joint Frameworks until Amendment 13 was completed by the Council. Amendment 13 was implemented through a final rule published April 27, 2004 (69 FR 22906). In doing so, the Council and NMFS ensured that the effects of allowing controlled access to the NE multispecies closed areas by the scallop fleet would be fully considered in light of the overall impacts on NE multispecies under Amendment 13 and Amendment 10.

Finally, due to inconsistency between the Multispecies FMP and the Scallop FMP with respect to closures to protect EFH, the Joint Frameworks propose to make the EFH closed areas the same in the Scallop FMP as in the Multispecies FMP.

**Proposed Measures**

The management measures that are applicable to the fishery within the Scallop Access Areas in CAI, CAII and NLCA are outlined in Items 1–13 below, and the remaining measures are described in Items 14–16. NMFS is publishing for public comment all of the measures adopted by the Council in the Joint Frameworks. NMFS has particular concerns about two measures, and is seeking public comment specifically on both of them in light of these concerns, to provide additional information.

The first measure that NMFS is concerned with is described in detail in Item 10 of this preamble. The measure would require the Regional Administrator (RA) to monitor catches of Georges Bank (GB) yellowtail flounder (yellowtail) reported by both scallop and NE multispecies vessels and, on or after December 1 each year, determine whether the GB yellowtail allocation for the Scallop Access Area can be increased without resulting in total catches above the overall allocation for GB yellowtail. NMFS is concerned that it may be too early in the multispecies fishing year, which began May 1, 2004, to effectively assess the likelihood of attaining the overall GB yellowtail allocation; the NE multispecies fishery continues through April 30. In addition, it may not be possible for the scallop fishery to effectively utilize an additional yellowtail allocation before the Scallop Access Areas close to scallop fishing on February 1 each year. NMFS specifically seeks comment on this measure in order to further assess its feasibility.

The second measure that NMFS has concerns with is a provision adopted by the Council that would have no associated regulation. The Council included the measure to encourage the scallop industry to avoid areas or times of high bycatch of yellowtail and other species and take voluntarily action to reduce such bycatch through information disseminated by NMFS or the Council. Under this proposal, either NMFS or the Council would distribute existing information about seasonal distribution of yellowtail and other finfish species so that catches of such species can be avoided by scallop vessels. Furthermore, data provided by fishing vessels through VMS would be used to identify areas where finfish bycatch is high and NMFS would provide an alert to vessel captains via VMS. NMFS is concerned that the costs of enacting such a system do not outweigh the potential benefits. NMFS also notes that the Council included measures in the Joint Frameworks to prevent the yellowtail bycatch from exceeding specified levels, and these measures may offset the benefits associated with enacting a real-time alert system.

*1. Scallop Access Areas*

Scallop Access Areas are proposed within portions of CAI, CAII, and NLCA. While the coordinates are specified in the proposed regulations, the areas are generally described as the central portion of CAI, the southern portion of CAII, and the eastern portion of NLCA. These Scallop Access Areas are similar to the areas where scallop fishing was allowed through the 2000 Sea Scallop Exemption Program for the period June 15, 2000—March 1, 2001. The Sea Scallop Exemption Program was implemented under Framework 13 to the Scallop FMP and Framework 34 to the Multispecies FMP (65 FR 37903, June 19, 2000). The Scallop Access Areas would not authorize scallop fishing in the EFH closed areas proposed in this rule. The proposed Scallop Access Areas would focus scallop fishing in the most productive scallop areas to maximize scallop yield while minimizing bycatch of other species and impacts on EFH.

*2. Rotation of Access Areas*

Two of the three Scallop Access Areas would be open for access each fishing year. CAII and NLCA would be opened for the rest of the 2004 fishing year, followed by CAI and CAII in the 2005 fishing year, and CAI and NLCA in the 2006 fishing year. This cycle would repeat beginning in the 2007 fishing year, unless modified by the Council through framework action or an amendment to the Scallop FMP. The rotational order is based on the expected concentrations of scallops within each area, so that each area is accessed when scallop concentrations are projected to maximize yield.

*3. Number of Trips, DAS Charges, and Scallop Possession Limits*

The total DAS allocated for scallop Access Area fishing, the number of access trips into each area, the DAS charge per trip, and the scallop possession limit are specified for each Scallop Access Area. These measures would be established for vessels issued limited access scallop permits according to permit category: Full-time, Part-time, and Occasional. Vessels in each permit category would be allocated a specific number of DAS for use in Scallop Access Areas, with a specified number of DAS charged for each area trip, regardless of actual trip length. In addition, the Joint Frameworks specify the maximum number of trips that can be made into any one access area, by vessel permit category. The Joint Frameworks also allocate a possession limit for trips into each access area.

The following tables provides the trip, DAS charges, and possession limits, by permit category and by year, through 2006. The Hudson Canyon (HC) Access Area trip allocations, DAS charges, and

possession limits are included in the table as part of the complete area rotation program as implemented under Amendment 10 and proposed in this action. Part-time and Occasional scallop vessels have separate allocations for the HC Access Area in the 2004 fishing year because the possession limit and DAS charges are different between the Closed Area Access Areas and the HC Access Area.

TABLE 1.—TOTAL NUMBER OF ACCESS AREA TRIPS AND DAS CHARGE PER TRIP

| Fishing year | Access area | Maximum trips per area and per vessel | Total number of trips; and DAS charge per trip | | |
|---|---|---|---|---|---|
| | | | Full-time | Part-time | Occasional |
| 2004 | Closed Area II | 2 | 7 trips; 12 DAS | 2 trips; 11.2 DAS | 1 trip; 7 DAS. |
| | Nantucket Lightship | 1 | | | |
| | Hudson Canyon | 4 | | 1 trip; 12 DAS | 1 trip; 12 DAS. |
| 2005 | Closed Area I | 1 | 5 trips; 12 DAS | 2 trips; 12 DAS | 1 trip; 5 DAS. |
| | Closed Area II | 1 | | | |
| | Hudson Canyon | 3 | | | |
| 2006 | Closed Area I | 1 | 2 trips; 12 DAS | 1 trip; 9.6 DAS | 1 trip; 2 DAS. |
| | Nantucket Lightship | 1 | | | |

An example, using a Part-time vessel, illustrates the flexibility provided by the allocation of trips and DAS. In the 2004 fishing year, a Part-time vessel would be allocated a total of 22.4 DAS and two trips. The trips could be taken in either CAII or NLCA, though only one trip could be taken in NLCA. The vessel owner may choose to take one trip in the NLCA and one trip in CAII. Alternatively, the vessel owner may choose to take both trips in CAII, because CAII has two trips allocated in the 2004 fishing year; if the vessel owner chooses to take two trips into the CAII Access Area, the vessel would not be eligible to fish any trips in NLCA, because it would have fully utilized its allocation of two trips.

TABLE 2.—POSSESSION LIMITS BY AREA, FISHING YEAR, AND PERMIT CATEGORY

| Fishing year | Access area | Possession limit | | |
|---|---|---|---|---|
| | | Full-time | Part-time | Occasional |
| 2004 | Closed Area II | 18,000 lb (9,525 kg) | 16,800 lb (7,620 kg) | 10,500 lb (4,763 kg). |
| | Nantucket Lightship. | | | |
| | Hudson Canyon | | 18,000 lb (9,525 kg) | 18,000 lb (9,525 kg). |
| 2005 | Closed Area I | 18,000 lb (9,525 kg) | 16,800 lb (7,620 kg) | 7,500 lb (3,402 kg). |
| | Closed Area II. | | | |
| | Hudson Canyon. | | | |
| 2006 | Closed Area I | 18,000 lb (9,525 kg) | 14,400lb (6,532 kg) | 3,000 lb (1,361 kg). |
| | Nantucket Lightship. | | | |

*4. Scallop Total Allowed Catch (TAC)*

The management measures within the Scallop Access Areas are established to attain a target TAC of scallops as specified in the area rotation program established in the Scallop FMP by Amendment 10. These TACs would be used to monitor fishing activity and determine whether to adjust fishing effort levels for future years. These TACs are also used to calculate TAC set-asides for research, observer coverage, and general category vessels. These TAC set-asides would be established as absolute limits on the amount of scallops harvested during a specific activity, and that activity would cease when the set-aside TAC was attained. The overall target TACs for the scallop fishery would be: (1) 8,395,203 lb (3,808 mt) for CAII and 7,718,384 lb (3,501 mt) for NLCA in the 2004 fishing year; (2) 3,243,000 lb (1,471 mt) for CAI and 7,698,542 lb (3,492 mt) for CAII in the 2005 fishing year; and (3) 2,824,122 lb (1,281 mt) for CAI and 6,796,852 lb (3,083 mt) for NLCA in the 2006 fishing year.

*5. One-for-One Trip Exchanges*

The Joint Frameworks would allow limited access vessels to exchange access area trips with other vessels. This provision was approved as part of Amendment 10, but was not available to be used by vessels because an exchange can only be made when more than one access area has been established (Amendment 10 established one access area, the HC Access Area). Vessels would be allowed to enter into agreements to exchange trips for 3 months following implementation of the Joint Framework. After the three month period, vessel owners would not be allowed to negotiate exchanges of trips. Vessel owners would be allowed to use trips authorized under the trip exchange program for the remainder of the fishing year. Because trip allocations, DAS charges, and possession limits would differ between scallop permit categories, vessels must exchange only with vessels issued permits in the same scallop permit category. Since Occasional vessels would be allocated only one trip, they would not be eligible to exchange trips.

*6. General Category Access Provisions*

Vessels issued open-access general category scallop permits would be allowed to fish within the Scallop Access Areas subject to the restrictions specified below. This provision is intended to provide vessels in the general category fleet with more flexibility in fishing opportunities by allowing access to productive scallop areas within the NE multispecies closed areas. Additional management restrictions have been proposed by the

Council in order to ensure accurate accounting of catch, and to ensure that general category fishing effort does not cause bycatch or excessive effort and mortality on scallops. The Joint Frameworks would amend the Multispecies FMP to allow general category vessels to fish within the NE multispecies closed areas, where such fishing is currently prohibited. General category vessels would be subject to the following restrictions:

a. A possession limit of 400 lb (181.4 kg) of shucked or 50 U.S. bushel (17.6 hl) of in-shell scallops per trip.

b. A set-aside TAC for general category vessels, equal to 2 percent of the overall scallop TAC for each Scallop Access Area, requiring general category vessels to stop fishing in the specific scallop Access Area once the set-aside TAC is reached. The general category set-aside TACs for 2004, 2005, and 2006, are as follows: (1) 2004; 167,904 lb (76 mt) in CAII and 154,368 lb (70 mt) in NLCA; (2) 2005; 64,860 lb in CAI and 153,971 lb (70 mt) in CAII; and (3) 2006; 56,482 lb in CAI and 135,937 lb (62 mt) in NLCA.

c. A requirement to install and use a NMFS-certified Vessel Monitoring System (VMS) in order to notify NMFS when a vessel plans to fish in a Scallop Access Area.

d. A prohibition on retaining or landing NE multispecies with a requirement to report all catch of yellowtail caught, including discards, so it can be counted against the yellowtail TAC for the scallop fishery.

e. A requirement to carry at-sea observers when requested.

f. VMS reporting of scallop and yellowtail catch to monitor fishery activity and bycatch. (These requirements are also required of limited access scallop vessels).

g. A requirement that Scallop dredge gear used within a Scallop Access Area be constructed with rings with a minimum diameter of 4 inches (10.2 cm) (Amendment 10 imposed this requirement for General category vessels fishing in open areas, but delayed the requirement until December 23, 2004).

*7. Gear Restrictions for Limited Access Vessels*

Limited access scallop vessels fishing within the Scallop Access Areas in CAI, CAII, and NLCA would be required to use scallop dredge gear only. The minimum diameter for rings used in the scallop dredge is proposed to be 4 inches (10.2 cm). Amendment 10 imposed the minimum ring size requirement for Limited Access vessels fishing in the HC Access Area, but delayed the requirement in the open areas until December 23, 2004. The requirement to use scallop dredge gear only is intended to maximize scallop catch selectivity and to minimize bycatch. The minimum dredge ring size is intended to reduce the catch of small scallops.

*8. Scallop Access Area Season*

The CAI, CAII, and NLCA Scallop Access Areas would be open to scallop fishing from June 15 through January 31 each year. The season is intended to reduce scallop fishing effort in the areas during peak spawning periods for some NE multispecies species, when NE multispecies concentrations are expected to occur.

*9. Yellowtail Catch Limits*

The Scallop Access Area program would be subject to a TAC for yellowtail set at 10 percent of the total TAC established in Amendment 13 to the Multispecies FMP for each yellowtail stock. Two percent of this scallop fishery yellowtail bycatch TAC (*i.e.*, 2 percent of the 10 percent bycatch TAC, or 0.2 percent of the overall yellowtail TAC) would be set aside for vessels to harvest during approved research, as described below. The TAC governing the Scallop Access Area fishery would, therefore, be equal to 9.8 percent of the overall yellowtail TAC for each stock. The following table specifies the yellowtail bycatch TAC and yellowtail research TAC set-aside.

| Yellowtail stock | Controlled access area | Fishing year | Access area bycatch TAC (10 percent of total TAC) | Controlled access fishery TAC (9.8 percent of total TAC) | Research TAC |
|---|---|---|---|---|---|
| Southern New England. | Nantucket Lightship | 2004 | 154,764 lb (70.7 mt) | 152,780 lb (69.3 mt) | 3,086 lb. (1.4 mt). |
| | | 2005 | 436,956 lb (198.2 mt) | 428,138 lb (194.2 mt) | 8,818 lb. (4.0 mt). |
| | | 2006 | 733,037 lb (332.5 mt) | 718,266 lb (325.9 mt) | 14,771 lb. (6.7 mt). |
| GB | Closed Area I and Closed Area II combined. | 2004 | 1,322,774 lb (600 mt) | 1,296,318 lb (588 mt) | 26,455 lb. (12 mt). |
| | | 2005 | (1) | (1) | (1) |
| | | 2006 | (1) | (1) | (1) |

[1] To be updated annually according to the specifications procedure associated with the U.S./Canada Resource Sharing Understanding under the NE multispecies regulations.

Scallop vessels fishing in the Scallop Access Areas would be required to report all yellowtail catches (all catch, including discards) and all catch would be counted toward the TAC. When the yellowtail TAC established for a Scallop Access Area is attained, the scallop fishery in the affected access area would close and any remaining access area trips would be redirected into open areas, as explained in Item 10 below.

The Multispecies FMP established a TAC for yellowtail under the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, and the NE multispecies fishery within the area closes when the TAC is fully attained. If the U.S./Canada yellowtail TAC is fully attained, scallop trips within the Scallop Access Areas in the Eastern U.S./Canada Area (CAI and CAII) would be allowed to continue, though retention of yellowtail would be prohibited, until the yellowtail catches by scallop vessels fully attain the scallop fishery's yellowtail set-aside. At that time, the scallop fishery in the Scallop Access Areas would be closed and any remaining access area trips would be redirected into open areas, as explained in Item 10 below.

As noted above, NMFS has concerns about the feasibility of implementing the measure requiring NMFS to monitor the landings of scallops and yellowtail through vessel VMS reports, dealer reports, and at-sea observer reports and, to take appropriate action based on projections of whether the yellowtail harvest will be achieved. Specifically, the measure states that if, on December 1 each year, the catch of yellowtail by scallop vessels fishing in the Scallop Access Area is below the yellowtail

TAC set for the GB yellowtail stock, and if the overall GB yellowtail TAC is not projected to be harvested, then the RA could enact measures to increase the Scallop Access Area yellowtail TAC allocated to scallop vessels fishing in the Scallop Access Area. The Joint Frameworks specify that the yellowtail TAC would be increased only if such increase would not be expected to cause the yellowtail TAC under the Multispecies FMP to be exceeded. NMFS seeks public comment concerning the feasibility of implementing this measure, particularly regarding the likelihood that NMFS could assure that the increase in the yellowtail TAC in the Scallop Access Area would not result in the overall yellowtail TAC being exceeded.

The Joint Frameworks would establish a set-aside of 2 percent of the yellowtail TAC allocated for the Scallop Access Area for the harvest of yellowtail during research approved under the existing scallop research TAC set-aside program. If research fishing that would be conducted within the Scallop Access Areas is approved, a small amount of yellowtail would be allocated for catch by the vessels involved in the research activity. This is intended to enable researchers to conduct their activities, even if the overall yellowtail TAC has been attained. Without this research set-aside, scallop research approved as part of the scallop TAC set-aside program would be prohibited if the Scallop Access Area were closed due to attainment of the yellowtail TAC.

*10. Trip Re-Allocation if Scallop Access Area Is Closed*

The Scallop Access Areas could close before limited access scallop vessels have taken all of their NE multispecies closed area access trips if the yellowtail TAC is fully attained. The Joint Frameworks propose that if the yellowtail TAC allocated to the scallop Area Access fishery is harvested, limited access scallop vessels would be allowed to take unused NE multispecies closed area access trips in open areas, up to the lesser of the following: (1) The difference in the number of equivalent DAS allocated for the affected Access Area and the number of DAS charged to a vessel for trips taken into the affected Access Area; or (2) the difference between open area DAS allocations specified in this rule with access and the 2004 default DAS allocation or open area DAS allocations prior to implementation of the Joint Frameworks (*i.e.*, DAS allocations without access to the NE multispecies closed areas as specified in Amendment 10). A maximum number of DAS would only be available to a vessel if it had taken no trips in the Access Area prior to closure. If a vessel took any trips, the maximum number of DAS to be used in open areas would be deducted by the number of DAS charged for each trip in the Access Area. The following table summarizes the maximum number of DAS that a vessel may fish in open areas if the Access Area closes prior to completion of all trips.

| | Permit category | 2004 | 2005 | 2006 |
|---|---|---|---|---|
| Open Area DAS prior to the Joint Frameworks | Full-time | [1] 62 | 117 | 152 |
| | Part-time | [1] 25 | 47 | 61 |
| | Occasional | [1] 5 | 10 | 13 |
| Open Area DAS under the Joint Frameworks | Full-Time | 42 | 40 | 67 |
| | Part-time | 17 | 16 | 27 |
| | Occasional | 4 | 3 | 6 |
| Difference in DAS allocations | Full-time | 20 | 77 | 85 |
| | Part-time | 8 | 31 | 34 |
| | Occasional | 1 | 7 | 7 |
| Maximum number of DAS to be used in Open Areas after Access Area Closure. | Full-time | 20 | 24 | 24 |
| | Part-time | 8 | 24 | 9.6 |
| | Occasional | 1 | 5 | 2 |

[1] DAS to be implemented on September 15, 2004, if a final rule for the Joint Frameworks is not published by that date.

For example, a Full-time scallop vessel with two unused trips into the CAII Scallop Access Area in the 2004 fishing year when the Access Area was closed could fish an additional 20 DAS in open areas. A Full-time scallop vessel with one remaining trip into the CAII Scallop Access Area in the 2004 fishing year when the Access Area was closed could fish an additional 12 DAS in open areas. This provision is intended to allow scallop vessels to reasonably utilize their DAS and trip allocations, even if the Scallop Access Areas close due to harvest of the yellowtail TAC.

*11. Finfish Possession Limits*

Limited access scallop vessels fishing in a Scallop Access Area would be restricted to a possession limit of 1,000 lb (453.6 kg) of all NE multispecies combined, including 100 lb (45.4 kg) of cod which could be retained for personal use only. No cod could be sold from a scallop vessel participating in the Access Area program and all cod possessed on board must be whole and gutted for ease of enforcement. Limited Access scallop vessels would be restricted to existing possession limits for haddock, monkfish, and yellowtail. As explained above, yellowtail is further managed through the establishment of Scallop Access Area TACs, and possession of yellowtail would be prohibited when those TACs are attained.

*12. At-Sea Observer Coverage*

One percent of the scallop target TAC would be set aside and available to help defray the cost of at-sea observers deployed on scallop vessels. Observers would collect information on catch and discards of scallops and other species including incidental catch of other finfish and sea turtles. Observer reports would provide more accurate estimates of yellowtail bycatch for use in monitoring the TAC for yellowtail, for estimation of bycatch of other finfish and sea turtles. Vessels would be allowed to catch extra scallops under the TAC set-aside, to help pay for the cost of carrying an observer on the vessel. This measure mirrors the observer set-aside established in Amendment 10, and is part of the Council's standardized bycatch reporting methodology.

The amount of observer coverage resulting from the 1-percent TAC set-aside, combined with NMFS-funded observer coverage, to cover at least 5 percent of the trips, is estimated to provide observer coverage for approximately 9, 5, and 12 percent of trips allocated in CAI, CAII, and the NLCA, respectively. The Council estimated that this amount of observer coverage would reduce variability in bycatch estimates for yellowtail, other finfish, and sea turtles, in order to provide more accurate and statistically sound bycatch estimates than would

otherwise be achieved without the additional coverage.

*13. Expanded Reporting Requirements*

All scallop vessels fishing in the Scallop Access Areas would be required to report their catches of scallops and yellowtail using VMS. Yellowtail reporting is critical to ensure accurate monitoring of the yellowtail TACs. The reports would be submitted via VMS on a daily basis.

*14. Modified EFH Closure Areas*

Amendment 10 established some areas within the NE multispecies closed areas as EFH closed areas in order to specifically protect EFH from adverse effects of scallop fishing. This action proposes to modify those areas to make them identical to those implemented under Amendment 13. These areas, some of which would extend beyond the boundaries of the NE multispecies closed areas, are intended to more effectively protect EFH by establishing consistent area closures under the Scallop and Multispecies FMPs.

*15. DAS Allocation Changes*

Amendment 10 established a default measure to increase the DAS allocated to limited access scallop vessels fishing in open areas, to take effect September 15, 2004. The measure specifies that the publication of a final rule enacting the Scallop Access Area program would prevent the default allocation from going into effect. Because the Council was concerned that final regulations might not be published by September 15, 2004, even if the Joint Frameworks are approved, the Joint Frameworks include a contingency measure that specifies that, if the default scallop DAS allocations go into effect, vessels that use any of those DAS could not fish in any Scallop Access Area until March 1, 2005. Vessels' owners who do not use any of the additional DAS allocated under the default would be eligible to fish in the Scallop Access Areas, if and when they are established.

*16. Corrections and Clarifications*

This proposed rule includes corrections and clarifications to the scallop regulations, and a new prohibition on the sale of fish from Federally permitted vessels to dealers that have not been issued Federal dealer permits. It has come to NMFS's attention that some Federally permitted vessel crews may be selling scallops to dealers that have not been issued Federal dealer permits. This circumvents the Federal dealer permit and reporting requirement that is necessary for adequate administration and enforcement of the management program. The prohibition is proposed for both the Scallop and Multispecies FMPs.

**Classification**

At this time, NMFS has not determined that the action that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

The Council prepared an IRFA as required under section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

A description of the action, why it is being considered, and the legal basis for the action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap or conflict with any relevant Federal rules.

*Description of Small Entities to Which the Proposed Rule Will Apply*

The measures proposed in the Joint Frameworks would impact vessels issued limited access and general category sea scallop vessel permits. All of these vessels are considered small business entities for purposes of the RFA because all of them grossed less than $3.5 million according to the dealer reports for the 2001 and 2002 fishing years (the most recent complete fishing year landings information available). There are two main components of the scallop fleet: Vessels eligible to participate in the limited access sector of the fleet and vessels that participate in the open access general category sector of the fleet. Limited access vessels are issued permits to fish for scallops on a full-time, part-time, or occasional basis. According to permit data from the 2003 fishing year, there were 278 Full-time permits, 33 Part-time permits, and 10 Occasional permits. In addition, there were 2,257 vessels issued permits to fish in the General category in 2003. Annual scallop revenue for the limited access sector averaged from $615,000 to $665,600 for Full-time vessels, $194,790 to $209,750 for Part-time vessels, and $14,400 to $42,500 for Occasional vessels during the 2001 and 2002 fishing years. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than $3.5 million per vessel.

Two criteria, disproportionality and profitability, were considered in determining the significance of regulatory impacts. The disproportionality criterion compares the effects of the regulatory action on small versus large entities. All of the vessels permitted to harvest sea scallops are considered to be small entities. The profitability criterion applies if the regulation significantly reduces profit for a substantial number of small entities, and is discussed in the Economic Impacts of the Proposed Action section of the IRFA summary in preamble of this proposed rule.

*Proposed Reporting, Recordkeeping, and Other Compliance Requirements*

The Joint Frameworks propose new reporting, recordkeeping, and compliance requirements only upon general category scallop vessels. The new requirements proposed in this proposed rule are the following: (1) Installation of VMS units; (2) documentation of VMS unit installation; (3) notification through VMS of intent to fish in the NE multispecies closed area access areas; (4) notification via VMS of NE multispecies closed area access area trip specifics; (5) notification via VMS on the day the vessel departs for a NE multispecies closed area access area trip; (6) daily reporting of scallop and yellowtail catch; and (7) polling of the VMS units for general category vessels twice every hour. The total cost of compliance is relatively high because the cost of purchasing, installing, and operating the VMS unit is approximately $2,700 per vessel. Spread across the general category fleet, costs associated with VMS notifications and catch reporting are relatively low, at about $90 per vessel per year (based on the cost of a VMS message, equal to $0.79 per VMS message). Although these requirements will increase compliance costs for general category vessels, and will impose a high initial cost for purchasing the VMS unit and installation, without such requirements, the Council proposed no alternative that would allow access without the use of VMS. A vessel's ability to offset the cost of the VMS unit, its installation, and operation would dictate the number of vessels that are subject to the new compliance costs. Nevertheless, the proposed access fishery for general category vessels expands those vessels' flexibility and opportunity to fish in different areas.

*Economic Impacts of the Proposed Action*

The IRFA considers the economic impacts of the proposed management measures in aggregate, evaluating the effects of all of the proposed measures together. The IRFA also considers and compares the economic effects of each proposed management measure and its alternatives, distinct from other alternatives. All economic impacts were analyzed relative to no action, defined as the continuation of the scallop fishery without access to the NE multispecies closed areas, and subject to higher open area DAS allocations.

**Summary of Aggregate Economic Impacts Compared to No Action**

The combined economic impacts of the proposed action (including the suite of measures proposed by the Council in the Joint Frameworks) are positive for the majority of small business entities in the scallop fishing industry. The economic analyses demonstrated, however, that from 2004 through 2007, the proposed action would produce slightly lower revenues per year, on average, compared to the no action alternative. Revenues under the proposed action are expected to be approximately $60,000 less for the entire scallop fleet than the no action alternative. This is because, under no action, open area DAS would be higher in open areas for 2004 through 2007 without access to the NE multispecies closed areas. Open area landings are not restricted by a possession limit, and total scallop landings would be higher than if vessels were restricted by the possession limits and TACs under the proposed Scallop Area Access program. The price of scallops would decline, offsetting the increase in landings compared to the proposed action. Access to the NE multispecies closed areas would have positive impacts, however, on producer benefits and gross profits of the scallop fishery compared to no action. Because of the expected higher scallop abundance in the NE multispecies closed areas, which should result in higher landings per unit effort (LPUE), the operating expenses per pound of scallops are expected to decline by almost 30 percent with access, and gross profits, calculated as gross revenues net of operating costs and crew shares, are estimated to increase by 18 percent. The long-term economic impacts of allowing access to the NE multispecies closed areas are expected to be positive, as well, compared to no action, increasing revenues and profits by nearly 2 percent and 23 percent, respectively, on average per year. Without access, initial higher landings are expected to eventually have negative impacts on scallop biomass, LPUE, and landings in future years, resulting in overall revenues and total benefits of $3.1 million and $47.2 million, respectively, less than the proposed action.

**Summary of Economic Impacts of Individual Proposed Measures**

(1) *Access area boundaries*—The Joint Frameworks considered four NE multispecies closed area access boundary alternatives. The economic impacts of the proposed and alternative Scallop Access Area boundaries are the same as those described in the aggregate impacts above because the analysis presumes that area boundaries are dependant on an overall access program. The proposed areas for the NE multispecies closed area scallop access program would have positive overall economic impacts on scallop vessels compared to the no action alternative, although short-term revenues would be slightly lower than under the no action alternative. The third Scallop Access Area alternative (non-selected), which would restrict the amount of area opened for access, resulted in the most negative impact, with a loss of $71,000 per year for the scallop fleet combined, on average, compared to the no action alternative.

(2) *EFH closed areas*—The Joint Frameworks considered three EFH closed area alternatives. The proposed EFH closed areas are consistent with the proposed Scallop Access Area boundary alternative and therefore have similar economic impacts. The boundaries of the EFH closures affect the scallop fishery similar to the proposed access boundaries and are not discussed separately. The economic impacts of the proposed EFH closed areas are similar among alternatives, with the exception of EFH closed area Alternative 3, which has the lowest economic benefit of all EFH closed area alternatives, because the area proposed for scallop access is constrained by the EFH closure boundaries, reducing the available scallop resource.

(3) *Gear restrictions*—In addition to the proposed measure, the Joint Frameworks considered allowing trawl gear to be used by scallop vessels in the NE multispecies closed areas (the no action alternative). Prohibiting trawls from accessing NE multispecies areas is expected to have negative economic impacts on scallop trawl vessels, but have positive impacts on the scallop fishing industry overall and the dredge gear sector. These impacts occur because fishing for scallops with trawl gear may result in larger catch of yellowtail and necessitate the closure of the Scallop Access Areas to scallop fishing if the finfish TACs are exceeded. Such a premature closure would reduce the net economic benefits for the majority of the scallop vessels. However, many scallop trawl vessels fish primarily in the Mid-Atlantic areas and do not fish in the GB areas. Only eight of the active trawl vessels in 1999 through 2002 fished in the GB areas and those that fished in the previous NE multispecies closed area access program in 1999 and 2000 used dredge gear. Therefore, the negative impacts of this gear requirement would be minimized if trawl vessels could use dredge gear, or trade their closed area access trips for HC or other Access Area trips, where vessels are allowed to use scallop trawls. Also, Amendment 10 provisions provide flexibility to Part-time and Occasional vessels fishing in the controlled access areas, and allows them to choose which Access Area to fish, up to the maximum number of trips allocated to each vessel. Therefore, Part-time and Occasional vessels may be able to use some or all of the closed area access trips in the Mid-Atlantic areas without the necessity to change gear.

(4) *Yellowtail TACs and procedures to help avoid bycatch*—Four measures were considered, three of which were proposed in the Joint Frameworks. The main difference between the proposed measures and the non-selected alternative is that, under the non-selected alternative, scallop vessels would not be allowed to redirect closed area access trips into open areas if the yellowtail TAC is harvested. The economic analysis is qualitative because it is not possible to determine when the yellowtail TAC could be harvested, thus closing the NE multispecies closed area access program. If the yellowtail TACs are exceeded before all scallop vessels have taken all of their eligible trips (meaning that target TAC would not be harvested), the landings of scallops, revenues and economic benefits would reduce the economic benefits from the access compared to the no action alternative. Without a measure to ensure that yellowtail catches do not exceed the yellowtail TACs and comply with the U.S./Canada Resource Sharing Understanding, however, it would not have been possible to provide access for scallop fishing to the NE multispecies closed areas. Therefore, the majority of the scallop vessels are expected to benefit from this measure, due to the opportunity provided to fish in those areas. In addition, the proposed action would allow transfer of unused closed

area access trips to open areas under DAS in case of an early closure of the closed area access program. This measure could alleviate the negative impacts from hard TACs, reduce derby-style fishing, and may prevent a reduction in vessel revenues in the short-term, if access areas are closed early. Furthermore, the rotation schedule proposed by Framework 16 would allocate fewer trips to the Nantucket Lightship access area in 2004, and thus would be less likely to result in closure of the NE multispecies closed areas. The provision to increase the yellowtail TAC if a specified limit is not harvested by December 1 of each year is expected to also have positive impacts on vessels by potentially allowing fishing operations to continue to higher levels of yellowtail catch. The proposed yellowtail catch set-aside could have indirect benefits on scallop vessels due to potential improvements in management through research. Any voluntary actions by the scallop industry to direct fishing activity away from areas of high bycatch, through information gathered by the industry or disseminated by NMFS, would prolong the scallop fishery in the closed areas and increase potential benefits.

(5) *Finfish possession limits*—Because the proposed action would increase the possession limit of Northeast multispecies from 300 lb (136 kg) to 1,000 lb (453.6 kg), it would have positive economic impacts on the scallop vessels fishing in the NE multispecies closed areas. Retaining a possession limit for yellowtail, even at an increased level, may provide additional incentive to avoid yellowtail, reducing the risk of reaching yellowtail TACs before the scallop closed area access program fishery is completed. Therefore, these measures would have indirect economic benefits for the vessels in the scallop fishery. The proposed possession limit of 100 lb (45.4 kg) of cod per trip for personal use may also have some positive economic impacts, compared to a zero possession limit, by allowing the retention of catch that could be used to offset some food costs on fishing trips.

(6) *Closed area access program seasons*—The proposed closed area access season (June 15 through January 31) is expected to have positive impacts on scallop vessels compared to the no action alternative. The proposed season would prevent scallop fishing during months when many species of NE multispecies are at peak spawning activity, and as a result, it would ensure that access to the GB multispecies areas is consistent with conservation goals of the NE Multispecies FMP. By allowing simultaneous access to these areas, it would provide more flexibility to fishermen to maximize their landings and revenues from the closed areas. The proposed season would have negative economic impacts compared to the alternative of a year-round fishery. However, year-round access may increase the likelihood of the scallop fishery catching the proposed yellowtail TAC quicker, thus reducing benefits of the higher valued scallop resource in the closed areas, and more efficient fishing operations.

(7) *At-sea observers, TAC set-asides, and fishery monitoring*—The Joint Frameworks propose to continue with the existing sampling frequency that can be funded with a 1-percent TAC set-aside (status quo). The scallop industry may benefit from improved management that could result from more accurate fishery information. The TAC set-asides would reduce a small portion of the scallop revenue available to the scallop vessels by removing a portion of the TAC from the overall TAC. The funds generated from the set-aside landings would also reduce the compliance costs for vessels by providing compensation for observer coverage.

(8) *VMS reporting requirements*—The requirement to have a VMS onboard for all scallop vessels that fish in the closed area access program would increase the costs of fishing for occasional vessels and vessels with the general category permits. Currently, all full and part-time vessels are required to have a VMS onboard, thus they would not be impacted by this proposed measure. However, for occasional vessels, the revenues from the controlled access trips would exceed the VMS costs. Further, Occasional scallop vessels have been subject to the VMS requirement in Access Areas since 1999. The impacts of these requirements on the general category vessels are examined separately. Even though VMS and other reporting requirements would increase the fishing costs by about $3,500 for some Occasional vessels, the economic benefits are expected to be equal to approximately $41,000 in 2004 and $29,000 in 2005, per vessel, from only the access areas. The reporting requirements would also have indirect economic benefits for the scallop fishery through improved management of the scallop resource and area expected to outweigh the compliance costs.

(9) *Closed area rotation schedule*—The proposed rotation strategy minimizes the risk of high yellowtail bycatch in the NLCA and would, therefore, reduce the likelihood of scallop revenue loss and reduce the total net benefits from closure of access areas before the scallop closed area access program is complete. As a result, the mechanical rotation strategy proposed by the Joint Frameworks would have positive economic benefits on scallop vessels.

(10) *Trip and DAS allocations*—There are no changes to the possession limits and DAS trade-offs in the Joint Frameworks from those included in Amendment 10 for Full-time vessels. Therefore, the economic impacts of area-specific DAS and trip allocations are within the range of impacts analyzed in Amendment 10. The Joint Frameworks propose to change the possession trips for the Part-time and Occasional vessels, however, in order to correct the inequities in access area trip allocations. Specifically, the allocations for the Part-time and Occasional vessels would be proportional to the Full-time allocations, similar to the DAS allocations prior to Amendment 10. Overall impacts of this adjustment during the 2004–2007 period would be positive for Part-time vessels, but negative for Occasional vessels. Potential landings would be reduced by 1,200 lb (544 kg) per trip for Part-time vessels and 7,500 lb (3,402 kg) per trip for Occasional vessels in 2004, compared to allowing a 18,000-lb (8,165 kg) possession limit. Similar reductions are proposed for 2005, but in 2006, Occasional vessels would be allowed possession limit of only 3,000 lb (1,361 kg) for one trip. Potential revenue losses for Occasional vessels is expected to be approximately $57,000 per year, compared to allowing a possession limit of 18,000 lb (8,165 kg). Although many Occasional scallop vessels have not fished in the controlled Access Areas in the past, vessels are allocated trips that can only be taken in Access Areas, making the possession limit restrictive. However, NMFS cannot determine whether or not these access trips would be more profitable than open area trips under more restrictive DAS limitations.

The Joint Frameworks also propose a change in the DAS and trip exchange option in order to prevent administrative complications that could arise if trips with unequal possession limits were exchanged. Under this alternative, Full-time vessels would trade only with another Full-time vessel, and the trades between Part-time and Occasional vessels would be similarly restricted. Although this measure is necessary to avoid management complications from unequal exchanges, it would also reduce the number of opportunities for trading trips. It would be especially difficult for Part-time and Occasional vessels because the vessels in the Part-time and

Occasional category have the flexibility to use their controlled access trips in any Access Area up to the maximum number of trips allocated to each vessel. This flexibility may reduce the need to exchange DAS allocations and mitigate some of the negative impacts resulting from a restrictive trade.

(11) *General category access to closed areas*—Allowing access to the closed areas by general category vessel would have positive impacts on the revenues of these vessels. Profitability of access area trips will depend, however, on net revenues (i.e., revenues net of operating costs, crew shares, and VMS costs). The requirement to carry a VMS onboard would impose additional compliance costs for these vessels, which are estimated to be approximately $3,500 for the most expensive VMS unit, including the monthly message costs. With a possession limit of 400 lb (181.4 kg) per trip, general category vessels would likely have to take at least six trips to one of the closed areas to experience positive net revenues. Without the requirements, however, it would be difficult to control scallop mortality and monitor bycatch, and it may not be possible to provide access to the NE multispecies closed areas by general category vessels. Although difficult to predict, the benefits of expanding fishing opportunity for general category vessels could outweigh the cost of compliance with VMS, observer coverage, and other reporting requirements.

*Economic Impacts of Significant and Other Non-Selected Alternatives*

The Joint Frameworks considered several alternatives that could have had less negative economic impact on scallop vessels, owners, operators, and crews. Specifically, the Council considered the following measures: (1) Allowing all gear types in the closed area access program; (2) alternatives for redirecting fishing effort from closed areas to open areas when the yellowtail bycatch TAC is harvested; (3) year-round access to the NE multispecies closed area access areas; and (4) exempting Occasional and general category vessels from VMS reporting requirements in the access areas. Each of these alternatives was considered in comparison with the proposed measures. The Joint Frameworks concluded that the measures would provide more revenues initially through increased scallop landings, or would have reduced compliance costs. However, the Joint Frameworks also concluded that these non-selected alternatives would likely offset the overall benefits of the proposed measures for the scallop resource and industry.

This proposed rule contains new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements would apply to general category vessels only, and have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average as follows:

1. Purchase and installation of VMS units, OMB #0648–0491 (1 hr per response);
2. Verification of VMS units, OMB #0648–0491 (0.083 hr per response);
3. Daily reporting via VMS without an at-sea observer on board, OMB #0648–0491 (0.17 hr per response);
4. Daily reporting via VMS with an at-sea observer on board, OMB #0648–0491 (0.17 hr per response);
5. VMS notification of intent to fish on the 25th of the month preceding the intended trip, OMB #0648–0491 (0.033 hr per response);
6. VMS notification of scheduled Access Area trip 72 hr prior to departure, OMB #0648–0491 (0.033 hr per response);
7. VMS notification of trip 1 hr prior to departure, OMB #0648–0491 (0.033 hr per response);
8. Polling of VMS units twice per hour, OMB #0648–0491 (0.0014 hr per response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (*see* **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 20, 2004.

**Rebecca Lent,**

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

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

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.2, the definition for ''Bushel'' is revised to read as follows:

### § 648.2 Definitions.

* * * * *

*Bushel* (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft/3/ (53.24 L) of surfclams or ocean quahogs in shell, or 1.24 ft/3/ (35.24 L) of in-shell Atlantic sea scallops.

* * * * *

3. In § 648.10, paragraphs (b)(1)(iv) and (v) are revised, and paragraph (b)(1)(vi) is added as follows:

### § 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(iv) A scallop vessel issued a general category scallop permit when fishing under the Sea Scallop Area Access Program specified under § 648.60 and in the Sea Scallop Access Areas described in § 648.59(b) through (d);

(v) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

(vi) A vessel issued a limited access NE multispecies permit electing to fish under the U.S./Canada Resource Sharing Understanding, as specified in § 648.85(a).

* * * * *

4. In § 648.14, paragraph (a)(57) introductory text and paragraphs (a)(57)(i), (h)(25), (h)(26), (i)(1), and (s) are revised and paragraphs (a)(97), (a)(163), (a)(164), and (i)(10) through (13) are added to read as follows:

### § 648.14 Prohibitions.

(a) * * *

* * * * *

(57) Fish for or land per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport, in excess of 400 lb (181.4 kg) shucked, or 50 bu (17.6 hl) in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is fishing under scallop DAS; or

* * * * *

(97) Fail to comply with any of the provisions specified in § 648.56.

* * * * *

(163) Sell or transfer to another person for a commercial purpose, other than solely for transport, any NE multispecies harvested from the EEZ by a vessel issued a Federal NE multispecies permit, unless the transferee has a valid NE multispecies dealer permit.

(164) Sell or transfer to another person for a commercial purpose, other than solely for transport, any Atlantic sea scallops harvested from the EEZ by a vessel issued a Federal Atlantic sea scallop permit, unless the transferee has a valid Atlantic sea scallop dealer permit.

* * * * *

(h) * * *

* * * * *

(25) Fish for, possess, or land scallops from the areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(26) Retain yellowtail flounder in the areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(i) * * *

(1) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked or 50 bu (17.6 hl) of in-shell scallops.

* * * * *

(10) Refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator.

(11) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11.

(12) Fail to comply with the VMS requirements specified in §§ 648.10 and 648.60.

(13) Fail to comply with the requirements specified in § 648.60.

* * * * *

(s) Any person possessing or landing per trip, scallops in excess of 40 lb (18.1 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, at or prior to the time when those scallops are received or possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop permit that fishes for scallops exclusively in state waters.

* * * * *

5. In § 648.51, paragraph (f)(1) is revised to read as follows:

**§ 648.51 Gear and crew restrictions.**

* * * * *

(f) * * *

(1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, trawl nets, unless such vessel has on board a valid letter of authorization or permit that endorses the vessel to fish for scallops with trawl nets. A limited access scallop vessel issued a valid letter of authorization or permit that endorses the vessel to fish for scallops with trawl nets may not fish with trawl nets in the Access Areas specified in § 648.59(b) through (d).

* * * * *

6. In § 648.52, paragraphs (a), (b), and (c) are revised to read as follows:

**§ 648.52 Possession and landing limits.**

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from fishing for or landing per trip, or possessing at any time, in excess of 400 lb (181.4 kg) shucked, or 50 U.S. bu (17.6 hl) in-shell, scallops, with no more than one scallop trip of 400 lb (181.4 kg) of shucked, or 50 bu (17.6 hl) of in-shell scallops, allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from fishing for or landing per trip, or possessing at any time, more than 40 lb (18.1 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as described in § 648.60 are prohibited from fishing for or landing per trip, or possessing at any time, more than the sea scallop possession and landing limit specified in § 648.60(a)(5).

* * * * *

7. In § 648.53, paragraphs (b)(1), (b)(2), (b)(4), (c), (d), and (h) are revised, and paragraph (b)(5) is added to read as follows:

**§ 648.53 DAS allocations.**

* * * * *

(b) * * *

(1) For fishing years after 2006, total DAS to be used in all areas other than those specified in § 648.59, will be specified through the framework process as specified in § 648.55.

(2) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (Full-time, Part-time, or Occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, after deducting research and observer DAS set-asides from the total open area DAS allocation. A vessel whose owner/operator has declared it out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its maximum allocated DAS, may leave port without being assessed a DAS, as long as it does not fish for or land per trip, or possess at any time, more than 400 lb (181.4 kg) of shucked or 50 bu (17.6 hL) of in-shell scallops and complies with all other requirements of this part. The annual open area DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

| DAS category | 2004 [1] | 2005 | 2006 |
|---|---|---|---|
| Full-time | 42 | 40 | 67 |
| Part-time | 17 | 16 | 27 |
| Occasional | 4 | 3 | 6 |

[1] Unless additional DAS are allocated as specified in paragraph (b)(4) of this section.

* * * * *

(4) *Additional 2004 DAS.* (i) Unless a final rule is published in the **Federal Register** by September 15, 2004, that implements a framework action allowing access by scallop vessels to portions of the NE multispecies closed areas specified in § 648.81(a), (b), and (c), the DAS allocations for the 2004 fishing year, beginning on September 15, 2004, shall increase by the following amounts:

| DAS category | 2004 DAS increase |
|---|---|
| Full-time | 20 |

| DAS category | 2004 DAS increase |
|---|---|
| Part-time | 8 |
| Occasional | 1 |

(i) If a final rule is published in the **Federal Register** after September 15, 2004, that implements a framework action allowing access by scallop vessels to portions of the NE multispecies closed areas specified in § 648.81(a), (b), and (c), and after the DAS increase becomes effective, as specified in paragraph (b)(4)(i) of this section, then limited access scallop vessels may use the Open Area DAS specified in paragraph (b)(4)(i) of this section. Such vessels are not eligible to fish under the Area Access Program described in § 648.60 until March 1, 2005.

(ii) If a TAC for yellowtail flounder is harvested for an Access Area specified in § 648.59(b) through (d), a scallop vessel with remaining trips in the affected Access Area may fish any remaining trips in the open areas, with the following maximum DAS use limits:

(A) A full-time vessel may fish up to 20 DAS in 2004, 24 DAS in 2005, and 24 DAS in 2006, subject to the maximum number of DAS associated with the unused Access Area trip(s).

(B) A part-time vessel may fish up to 8 DAS in 2004, 12 DAS in 2005, and 9.6 DAS in 2006, subject to the maximum number of DAS associated with the unused Access Area trip(s).

(C) An occasional vessel may fish up to 1 DAS in 2004, 5 DAS in 2005, and 2 DAS in 2006, subject to the maximum number of DAS associated with the unused Access Area trip(s).

(5) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted. For example, the 2005 fishing year refers to the period March 1, 2005, through February 28, 2006.

(c) *Sea Scallop Access Area DAS allocations.* Limited access scallop vessels fishing in a Sea Scallop Access Area specified in § 648.59, under the Sea Scallop Area Access Program specified in § 648.60, are allocated a specific number of trips to fish only within the Sea Scallop Access Areas, with the number of DAS charged for each trip designated for each area regardless of actual trip length. The number of trips and DAS to be charged for each scallop permit category and fishing year through 2006 for each Sea Scallop Access Area are provided in paragraphs (c)(1) through (3) of this section. Limited access scallop vessels may fish a maximum number of trips and associated DAS in each Sea Scallop Access Area, as specified in § 648.60(a)(3). In addition, limited access scallop vessels area allocated a maximum number of trips and DAS that can be used within any of the Scallop Access Areas. As an example, if the total number of trips that a scallop vessel may take is two trips, and there are two Sea Scallop Access Areas opened to controlled fishing, with Area A having a maximum of one trip and Area B having a maximum of two trips, the vessel may take one trip in Area A and one trip in Area B, or both of its total allocated trips in Area B.

(1) Full-time scallop vessels may take seven trips in 2004, five trips in 2005, and two trips in 2006. DAS charges are 12 DAS for each trip, regardless of trip length.

(2) Part-time scallop vessels may take three trips in 2004, two trips in 2005, and one trip in 2006. DAS charges are 12 DAS for the Hudson Canyon Access Area and 11.2 DAS for the Closed Area II and Nantucket Lightship Access Areas in 2004, 12 DAS in 2005, and 9.5 DAS in 2006.

(3) Occasional scallop vessels may take two trips in 2004, one trip in 2005, and one trip in 2006. DAS charges are 12 DAS in 2004 for the Hudson Canyon Access Area and 7 DAS for the Closed Area II or Nantucket Lightship Access Areas, 5 DAS in 2005, and 2 DAS in 2006.

(d) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. Except for DAS for the 2006 fishing year, if a biennial framework action is not undertaken by the Council and enacted by NMFS, the allocations from the most recent fishing year will continue. The Council must determine whether or not the 2006 DAS allocations specified in the table in paragraph (b)(2) of this section are sufficient to achieve OY. The 2006 DAS must be adjusted in the first biennial framework, initiated in 2005, if it is determined that the 2006 DAS allocations are unable to achieve OY in the 2006 fishing year. The Council may also adjust DAS allocations through a framework action at any time, if deemed necessary.

* * * * *

(h) *DAS set-asides*—(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(3) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS will be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage for the 2004, 2005, and 2006 fishing years are 117 DAS, 111 DAS, and 187 DAS, respectively. On September 15, 2004, the 2004 DAS set-aside will increase by 54 DAS if a final rule is not published that allows access to the GB NE multispecies closed areas. Vessels carrying an observer will be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS will accrue at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor will be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside will be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners will be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry an observer will not be waived due to the absence of additional DAS allocation.

(2) *DAS set-aside for research.* As specified in paragraph (b)(3) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research for the 2004, 2005, and 2006 fishing years are 233 DAS, 223 DAS, and 373 DAS, respectively. Vessels participating in approved research will be authorized to use additional DAS in the applicable fishing year. Notification of and additional DAS allocated will be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, as appropriate.

8. In § 648.55, paragraph (b) is revised to read as follows:

**§ 648.55 Framework adjustments to management measures.**

* * * * *

(b) The preparation of the SAFE Report shall begin on or about June 1, 2005, for fishing year 2006, and on or about June 1 of the year preceding the fishing year in which measures will be adjusted. With the exception of the 2006

fishing year, if the biennial framework action is not undertaken by the Council, or if a final rule resulting from a biennial framework is not published in the **Federal Register** with an effective date of March 1, in accordance with the Administrative Procedure Act, the measures from the most recent fishing year shall continue, beginning March 1 of each fishing year.

* * * * *

9. Section 648.59 is revised to read as follows:

**§ 648.59 Sea Scallop Access Areas.**

(a) *Hudson Canyon Sea Scallop Access Area.* (1) Through February 28, 2006, a vessel issued a limited access scallop permit may fish for scallops in, or possess and land scallops from, the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Any limited access scallop vessel not participating in the Area Access Program, may possess scallops while transiting the area as provided in paragraph (e) of this section.

(2) The Hudson Canyon Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

| Point | Latitude | Longitude |
|---|---|---|
| H1 | 39°30′ N. | 73°10′ W. |
| H2 | 39°30′ N. | 72°30′ W. |
| H3 | 38°30′ N. | 73°30′ W. |
| H4/ET4 | 38°50′ N. | 73°30′ W. |
| H5 | 38°50′ N. | 73°42′ W. |
| H1 | 39°30′ N. | 73°10′ W. |

(3) *Number of trips.* Subject to the total number of Sea Scallop Access Area trips allowed for each limited access scallop permit category specified in § 648.60(a)(3), a vessel issued a limited access scallop permit may fish no more than four trips during 2004 and three trips during 2005 in the Hudson Canyon Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Hudson Canyon Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(b) *Closed Area I Access Area.* (1) Through February 28, 2005, and every third fishing year thereafter (*i.e.*, 2007, 2010, etc.) vessels issued scallop permits may not fish for scallops in, or possess or land scallops from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section.

(2) Beginning March 1, 2005, through February 28, 2007, and for every 2-year fishing year period after each year the area is closed pursuant to paragraph (b)(1) of this section (*i.e.*, the 2008 through 2009 fishing years, and 2011 through 2012 fishing years, etc.), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for scallops in, or possess and land scallops from, the area known as the Closed Area I Access Area, described in paragraph (c)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Any limited access scallop vessel not participating in the Area Access Program, may possess scallops while transiting the area as provided in paragraph (e) of this section.

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

| Point | Latitude | Longitude |
|---|---|---|
| CAIA1 | 41°26′ N. | 68°30′ W. |
| CAIA2 | 40°58′ N. | 68°30′ W. |
| CAIA3 | 40°55′ N. | 68°53′ W. |
| CAIA4 | 41°04.5′ N. | 69°01′ W. |
| CAIA1 | 41°26′ N. | 68°30′ W. |

(4) *Season.* A vessel issued a scallop permit may not fish for scallops in, or possess or land scallops from, the area known as the Closed Area I Sea Scallop Access Area, described in paragraph (b)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area I Sea Scallop Access Area is open to scallop vessels.

(5) *Number of trips*—(i) *Limited access vessels.* Subject to the total number of Sea Scallop Access Area trips allowed for each limited access scallop permit category specified in § 648.60(a)(3), a vessel issued a limited access scallop permit may fish no more than one trip in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* Subject to the possession limit specified in §§ 648.52(b) and 648.60(a)(5), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area I Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(a)(8), that 162 trips in the 2005 fishing year, and 141 trips in the 2006 fishing year, have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2005 and 2006 fishing years.

(c) *Closed Area II Access Area.* (1) From March 1, 2006, through February 28, 2007, and every third fishing year thereafter, (*i.e.*, 2009, 2012, etc.) vessels issued scallop permits may not fish for scallops in, or possess or land scallops from, the area known as the Closed Area II Access Area, described in paragraph (c)(3) of this section.

(2) From [insert effective date of the final rule] through February 28, 2006, and for every 2-year fishing year period after each year the area is closed pursuant to paragraph (c)(1) of this section (*i.e.*, the 2007 through 2008 fishing years, and 2010 through 2011 fishing years, etc.) and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Any limited access scallop vessel not participating in the Area Access Program, may possess scallops while transiting the area as provided in paragraph (e) of this section.

(3) The Closed Area II Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

| Point | Latitude | Longitude |
|---|---|---|
| CAIIA1 | 41°00′ N. | 67°20′ W. |
| CAIIA2 | 41°00′ N. | 66°35.8′ W. |

| Point | Latitude | Longitude |
|---|---|---|
| CAIIA3 ..... | 41°18.6′ N. | 66°24.8′ W. |
| CAIIA4 ..... | 41°30′ N. | 66°34.8′ W. |
| CAIIA5 ..... | 41°30′ N. | 67°20′ W. |
| CAIIA1 ..... | 41°00′ N. | 67°20′ W. |

(4) *Season.* A vessel issued a scallop permit may not fish for scallops in, or possess or land scallops from, the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area II Access Area is open to scallop vessels.

(5) *Number of trips*—(i) *Limited access vessels.* Subject to the total number of Sea Scallop Access Area trips allowed for each limited access scallop permit category specified in § 648.60(b)(3), a vessel issued a limited access scallop permit may fish no more than two trips in 2004 and one trip in 2005 in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* Subject to the possession limits specified in §§ 648.52(b) and 648.60(a)(5), and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area II Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(a)(8), that 420 trips in the 2004 fishing year, and 385 trips in the 2006 fishing year, have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2004 and 2005 fishing years.

(d) *Nantucket Lightship Access Area.* (1) From March 1, 2005, through February 28, 2006, and every third fishing year thereafter (*i.e.*, 2008, 2011, etc.) vessels issued scallop permits may not fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section.

(2) From [insert effective date of the final rule] through February 28, 2005, and from March 1, 2006, through February 28, 2008, and for every 2-year fishing year period after each year the area is closed pursuant to paragraph (d)(1) of this section (*i.e.*, the 2009 through 2010 fishing years, and 2012 through 2013 fishing years, etc.) and subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a limited access scallop permit may fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Any limited access scallop vessel not participating in the Area Access Program, may possess scallops while transiting the area as provided in paragraph (e) of this section.

(3) The Nantucket Lightship Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

| Point | Latitude | Longitude |
|---|---|---|
| NLAA1 ..... | 40°50′ N. | 69°30′ W. |
| NLAA2 ..... | 40°50′ N. | 69°00′ W. |
| NLAA3 ..... | 40°20′ N. | 69°00′ W. |
| NLSS4 ..... | 40°20′ N. | 69°30′ W. |
| NLAA1 ..... | 40°50′ N. | 69°30′ W. |

(4) *Season.* A vessel issued a scallop permit may not fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, except during the period June 15 through January 31 of each year the Nantucket Lightship Access Area is open to scallop fishing.

(5) *Number of trips*—(i) *Limited access vessels.* Subject to the total number of Sea Scallop Access Area trips allowed for each limited access scallop permit category specified in § 648.60(b)(3), a vessel issued a limited access scallop permit may fish no more than one trip in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* Subject to the possession limits specified in §§ 648.52(b) and 648.60(a)(5), a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(a)(8), that 386 trips in the 2004 fishing year, and 340 trips in the 2006 fishing year, have been taken, in total, by all general category scallop vessels. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2004 and 2006 fishing years.

(e) *Transiting.* A limited access sea scallop vessel fishing under a scallop DAS that has not declared a trip into the Sea Scallop Area Access Program may enter in the Sea Scallop Access Areas described in paragraphs (a) through (c) of this section, and possess scallops not caught in the Sea Scallop Access Areas, for transiting purposes only provided the vessel's fishing gear is stowed in accordance with § 648.23(b), or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Access Area, as described in paragraph (d) of this section, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed in accordance with § 648.23(b).

10. Section 648.60 is revised to read as follows:

**§ 648.60 Sea Scallop area access program requirements.**

(a) A vessel issued a limited access scallop permit may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(8) and (b) through (e) of this section. A vessel issued a general category scallop permit may only fish in the Sea Hudson Canyon Sea Scallop Access Area specified in § 648.59(a), subject to the possession limit specified in § 648.52(b). A vessel issued a general category scallop permit may only fish in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), and subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(b), and provided the vessel complies with the requirements specified in

paragraphs (a)(1), (a)(2), (a)(3)(ii), (a)(5)(iii), (a)(6) through (a)(8), (d), and (e) of this section.

(1) *VMS.* Each vessel participating in the Sea Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraph (e) of this section.

(2) *Declaration.* (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in any Sea Scallop Access Area, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for trips into the Sea Scallop Access Areas if it is determined that there is insufficient time to provide such notification prior to an access opening. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) In addition to the information required under paragraph (a)(2)(i) of this section, and for the purpose of selecting vessels for observer deployment, each participating vessel owner or operator shall provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 72 hr, unless otherwise notified by the Regional Administrator, prior to the beginning of any trip into the Sea Scallop Access Area.

(iii) To fish in a Sea Scallop Access Area, each participating vessel owner or operator shall declare a Sea Scallop Access Area trip via VMS less than one hr prior to the vessel leaving port, in accordance with instructions to be provided by the Regional Administrator.

(3) *Number of Sea Scallop Access Area trips*—(i) *Table of Limited Access Vessel trips.* Except as provided in paragraph (c) of this section, the table below summarizes the total number of trips and DAS charges for limited access scallop vessels to take into Sea Scallop Access Areas during applicable seasons specified in § 648.59:

| Fishing year | Access area | Maximum trips per area and per vessel | Total number of trips; and DAS charge per trip | | |
|---|---|---|---|---|---|
| | | | Full-time | Part-time | Occasional |
| 2004 | Closed Area II | 2 | 7 trips; 12 DAS | 2 trips; 11.2 DAS | 1 trip; 7 DAS. |
| | Nantucket Lightship | 1 | | | |
| | Hudson Canyon | 4 | | 1 trip; 12 DAS | 1 trip; 12 DAS. |
| 2005 | Closed Area I | 1 | 5 trips; 12 DAS | 2 trips; 12 DAS | 1 trip; 5 DAS. |
| | Closed Area II | 1 | | | |
| | Hudson Canyon | 3 | | | |
| 2006 | Closed Area I | 1 | 2 trips; 12 | 1 trip; 9.6 | 1 trip; 2 DAS. |
| | Nantucket Lightship | 1 | | | |

(A) A limited access scallop vessel fishing in Sea Scallop Access Areas may fish the total number of trips specified above according to the vessel's category in any Sea Scallop Access Area, provided the number of trips in any one Sea Scallop Access Area does not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section. The DAS specified in the table in this paragraph (a)(3)(i) shall be automatically deducted for each Sea Scallop Access Area trip.

(B) [Reserved]

(ii) *One-for-one area access trip exchanges.* If the total number of trips into all Sea Scallop Access Areas combined is more than one, the owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized trips into one access area for unutilized trips into another Sea Scallop Access Area. Vessel owners must request the exchange of trips by submitting a completed Trip Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective, but no later than [insert date 3 months after publication of final rule in the **Federal Register**], in 2004, and June 1 of each year thereafter. Each vessel involved in an exchange is required to submit a completed Trip Exchange Form. Trip Exchange Forms will be provided by the Regional Administrator upon request. The Regional Administrator shall review the records for each vessel to confirm that each vessel has unutilized trips remaining to transfer. The transfer is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the trip exchange has been made effective. A vessel owner may exchange trips between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips.

(iii) General category scallop vessels may not fish for, possess, or land scallops in or from the Access Areas specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register**, stating that the total number of trips specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii) have been, or are projected to be, taken by general category scallop vessels.

(4) *Area fished.* While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops from outside the specific declared Sea Scallop Access Area during that trip, and must not enter or exit the specific declared Sea Scallop Access Area more than once per trip. A vessel on a Sea Scallop Access Area trip may not exit that Sea Scallop Access Area and transit to, or enter, another Sea Scallop Access Area on the same trip.

(i) *Reallocation of trips into open areas.* If the yellowtail flounder TAC allocated for a NE multispecies closed area Scallop Access Area specified in § 648.59(b) through (d) has been harvested, a vessel with trips remaining to be taken in the affected Access Area may fish the remaining DAS associated with the unused trip(s), up to the maximum DAS specified in § 648.53(b)(4)(C).

(ii) [Reserved]

(5) *Possession and landing limits*—(i) *Scallop possession limits.* Unless authorized by the Regional Administrator as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up

to the amounts specified in the table in this paragraph (a)(5). A vessel owner or operator of a general category scallop vessel may fish for, possess, and land, per trip, up to 400 lb (181.4 kg) of shucked scallops or 50 bu (17.6 hl) of in-shell scallops. No vessel fishing in the Sea Scallop Access Area may possess shoreward of the VMS demarcation line or land, more than 50 bu (17.6 hl) of in-shell scallops.

| Fishing year | Access area | Possession limit | | |
|---|---|---|---|---|
| | | Full-time | Part-time | Occasional |
| 2004 | Closed Area II<br>Nantucket Lightship. | 18,000 lb (9,525 kg) | 16,800 lb (7,620 kg) | 10,500 lb (4,763 kg). |
| | Hudson Canyon | | 18,000 lb (9,525 kg) | 18,000 lb (9,525 kg). |
| 2005 | Closed Area I<br>Closed Area II.<br>Hudson Canyon. | 18,000 lb (9,525 kg) | 16,800 lb (7,620 kg) | 7,500 lb (3,402 kg). |
| 2006 | Closed Area I<br>Nantucket Lightship. | 18,000 lb (9,525 kg) | 14,400 lb (6,532 kg) | 3,000 lb (1,361 kg). |

(ii) *NE multispecies possession limits and yellowtail flounder TAC.* After declaring a trip into a Sea Scallop Access Area and fishing within the Access Areas described in § 648.59(b) through (d), and provided the vessel has been issued a Scallop NE Multispecies Possession Limit permit as specified in § 648.4(a)(1)(ii), a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up to 1,000 lb (453.6 kg) of all NE multispecies combined, subject to the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section.

(A) *Atlantic Cod.* A vessel may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for personal use only and cannot be not sold, traded, or bartered. All cod must be whole and gutted.

(B) *Haddock.* Subject to the seasonal restrictions established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4), a vessel is prohibited from possessing or landing haddock from January 1 through June 30, but may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in paragraph (a)(5)(ii) of this section for the rest of the Sea Scallop Area Access Program season.

(C) *Yellowtail flounder*—(*1*) *Yellowtail flounder TACs.* Limited access scallop vessels participating in the Area Access Program and fishing within the Access Areas specified in § 648.59(b) through (d), are authorized to catch yellowtail flounder up to the TACs specified in § 648.85(c) for the Closed Area I, Closed Area II, and Nantucket Lightship Access Scallop Areas. The Regional Administrator shall publish notification in the **Federal Register** in accordance with the Administrative Procedure Act, to notify scallop vessel owners that the scallop fishery portion of the TAC for a yellowtail flounder stock has been or is projected to be harvested by scallop vessels in any Access Area. Upon notification in the **Federal Register** that a TAC has been or is projected to be harvested, scallop vessels are prohibited from fishing within the Access Area(s), where the TAC applies, for the remainder of the fishing year. The yellowtail flounder TACs allocated to scallop vessels may be increased by the Regional Administrator after December 1 of each year pursuant to § 648.85(c)(2).

(*2*) *SNE/MA yellowtail flounder possession limit.* After declaring a trip into and fishing within the Nantucket Lightship Access Area described in § 648.59(d), the vessel owner or operator of a limited access scallop vessel may fish for, possess, and land up to 250 lb (113.6 kg) per trip of yellowtail flounder between June 15 and June 30, and up to 1,000 lb (453.6 kg) per trip (if the vessel is in possession of no other NE multispecies) from July 1 through January 31, provided the yellowtail flounder TAC as specified in § 648.85(c)(i) has not been harvested.

(*3*) *GB yellowtail flounder possession limit.* After declaring a trip into and fishing within the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), the vessel owner or operator of a limited access scallop vessel may fish for, possess, and land up to 1,000 lb (453.6 kg) per trip of yellowtail flounder (if the vessel is in possession of no other NE multispecies), provided the yellowtail flounder TAC specified in § 648.85(c) has not been harvested. If the yellowtail flounder TAC established for the Eastern U.S./Canada Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(*3*), scallop vessels are prohibited from harvesting, possessing, or landing yellowtail flounder in the Closed Area I and Closed Area II Access Areas.

(iii) *General category scallop vessels*—(A) *Scallop TAC.* General category vessels fishing in the Access Areas specified in § 648.59(b) through (d) are authorized to land scallops, subject to the possession limit specified in § 648.52(b), up to the amount allocated to the scallop TACs for each Access Area specified below. If the scallop TAC for a specified Access Area has been, or is projected to be harvested, the Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify general category vessels that they may no longer fish within the specified Access Area.

(*1*) *Closed Area I Access Area.* 64,840 lb (29 mt) in 2005, and 56,482 lb (25.6 mt) in 2006.

(*2*) *Closed Area II Access Area.* 167,904 (76 mt) in 2004, and 153,971 lb (70 mt) in 2005.

(*3*) *Nantucket Lightship Access Area.* 154,368 lb (70 mt) in 2004, and 135,937 lb (62 mt) in 2006.

(B) *Possession Limits*—(*1*) *Scallops.* General category scallop vessels fishing in the Access Areas specified in § 648.59(b) through (d) may possess scallops up to the possession limit specified in § 648.52(b) and paragraph (a)(5) of this section, subject to a limit on the total number of trips that can be taken by all such vessels into the Access Areas, as specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii). If the number of trips allowed have been or are projected to be taken, the Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify general category vessels that they may no longer fish within the specified Access Area.

(*2*) *Other species.* General category vessels fishing in the Access Areas specified in § 648.59(b) through (d) are prohibited from possessing any other species of fish.

(6) *Gear restrictions.* The minimum ring size for dredge gear used by a vessel fishing on a Sea Scallop Access Area trip is 4 inches (10.2 cm) in diameter. Dredge or trawl gear used by a vessel fishing on a Sea Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(7) *Transiting.* While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed in accordance with § 648.23(b), unless there is a compelling safety reason to be in the area without gear stowed.

(8) *Off-loading restrictions.* The vessel may not off-load its catch from a Sea Scallop Access Area trip at more than one location per trip.

(b) *Accrual of DAS.* For each Sea Scallop Access Area trip, except as provided in paragraph (c) of this section, a vessel on a Sea Scallop Access Area trip shall have DAS specified in paragraph (a)(3) of this section deducted from its access area DAS allocation, regardless of the actual number of DAS used during the trip.

(c) *Compensation for Sea Scallop Access Area trips terminated early.* If a Sea Scallop Access Area trip is terminated before catching the allowed possession limit, the vessel may be authorized to fish an additional trip in the same Sea Scallop Access Area based on the conditions and requirements of paragraphs (c)(1) through (5) of this section.

(1) The vessel owner/operator has determined that the Sea Scallop Access Area trip should be terminated early for reasons deemed appropriate by the operator of the vessel;

(2) The amount of scallops landed by the vessel for the trip must be less than the maximum possession limit specified in paragraph (a)(5) of this section.

(3) The vessel owner/operator must report the termination of the trip prior to leaving the Sea Scallop Access Area by VMS email messaging, with the following information: Vessel name, vessel owner, vessel operator, time of trip termination, reason for terminating the trip (for NMFS recordkeeping purposes), expected date and time of return to port, and amount of scallops on board in pounds.

(4) The vessel owners/operator must request that the Regional Administrator authorize an additional trip as compensation for the terminated trip by submitting a written request to the Regional Administrator within 30 days of the vessel's return to port from the terminated trip.

(5) The Regional Administrator must authorize the vessel to take an additional trip and must specify the amount of scallops that the vessel may land on such trip and the number of DAS charged for such trip, pursuant to the calculation in paragraphs (c)(5)(i) through (iii) of this section. Such authorization will be made within 10 days of receipt of the formal written request for compensation.

(i) The number of DAS a vessel will be charged for an additional trip in the Sea Scallop Access Area shall be calculated as the difference between the number of DAS automatically deducted for the trip as specified in paragraph (b) of this section, and the sum of the following calculation: Two DAS, plus one DAS for each 10 percent increment of the overall possession limit on board. Pounds of scallops landed shall be rounded up to the nearest 10-percent increment.

(ii) The amount of scallops that can be landed on an authorized additional Sea Scallop Access Area trip shall equal 1,500 lb (680.4 kg) multiplied by the number of DAS to be charged for the resumed trip.

(iii) The vessel that terminates a Sea Scallop Access Area trip and has been authorized to take an additional trip shall have the DAS charged for that trip, as determined under paragraph (c)(5)(i) of this section, deducted from its Sea Scallop Access Area DAS allocation specified in paragraph (a)(3) of this section, regardless of the actual number of DAS fished during the additional trip. Vessels that are authorized more than one additional trip for compensation for more than one terminated trip may combine the authorized trips into one, if all terminated trips occurred in the same Sea Scallop Access Area and provided the total possession limits do not exceed those specified in paragraph (a)(5) of this section.

(d) *Increase of possession limit to defray costs of observers*—(1) *Observer set-aside limits by area*—(i) *Hudson Canyon Access Area.* For 2004 and 2005, the observer set-asides for the Hudson Canyon Access Area are 187,900 lb (85.2 mt) and 149,562 lb (67.8 mt), respectively.

(ii) *Closed Area I Access Area.* For the 2005 and 2006 fishing years, the observer set-asides for the Closed Area I Access Area are 32,430 lb (15 mt) and 28,241 lb (13 mt), respectively.

(iii) *Closed Area II Access Area.* For the 2004 and 2005 fishing years, the observer set-asides for the Closed Area II Access Area are 83,952 lb (38 mt) and 76,958 lb (35 mt), respectively.

(iv) *Nantucket Lightship Access Area.* For the 2004 and 2006 fishing years, the observer set-asides for the Nantucket Lightship Access Area are 77,184 lb (35 mt) and 67,968 lb (31 mt), respectively.

(2) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (d)(1) of this section. Owners of scallop vessels shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the possession limit will be decreased to the level specified in paragraph (a)(5) of this section. Vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research*—(1) *Research set-aside limits and number of trips by area*—(i) *Hudson Canyon Access Area.* For the 2004 and 2005 fishing years, the research set-asides for the Hudson Canyon Access Area are 375,800 lb (170.5 mt) and 299,123 lb (135.7 mt), respectively.

(ii) *Closed Area I Access Area.* For the 2005 and 2006 fishing years, the research set-asides for the Closed Area I Access Area and 64,860 lb (29 mt) and 56,482 lb (26 mt), respectively.

(iii) *Closed Area II Access Area.* For the 2004 and 2005 fishing years, the research set-asides for the Closed Area II Access Area are 167,904 lb (76 mt) and 153,971 lb (70 mt), respectively.

(iv) *Nantucket Lightship Access Area.* For the 2004 and 2006 fishing years, the research set-asides for the Nantucket Lightship Access Area are 154,368 lb (70 mt) and 135,937 lb (62 mt), respectively.

(2) *Defraying the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section or allow additional trips into a Sea Scallop Access Area to defray costs for approved sea scallop research up to the amount specified in paragraph (e)(1) of this section.

(3) *Yellowtail flounder research TAC set-aside.* Vessels conducting research approved under the process described in § 648.56, and in the Access Areas specified in § 648.59(b) through (d) may harvest yellowtail flounder up to the TACs specified in the table in this

paragraph (e)(3), and subject to the possession limits specified in paragraph (a)(5)(ii)(C) of this section. If the TACs listed in the table in this paragraph (e)(3) are harvested, research may no longer be authorized in the applicable Access Area.

| Yellowtail flounder stock | Access area | Fishing year | Yellowtail flounder research TAC |
|---|---|---|---|
| Southern New England | Nantucket Lightship | 2004 | 3,086 lb (1.4 mt). |
| | | 2005 | 8,818 lb (4.0 mt). |
| | | 2006 | 14,771 lb (6.7 mt). |
| GB | Closed Area I and Closed Area II | 2004 | 26,455 lb (12 mt). |
| | | 2005 | [1] |
| | | 2006 | [1] |

[1] To be established annually, according to the specification procedure described in § 648.85(a)(2).

(f) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as described in this section, all sea scallop vessels equipped with a VMS unit shall be polled at a minimum of twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs for the polling twice per hour.

11. Section 648.61 is revised to read as follows:

**§ 648.61 EFH closed areas.**

(a) No scallop fishing vessel may enter, fish in, or be in the EFH Closure Areas described in § 648.80(h)(1)(i) through (iv). A chart depicting these areas is available from the Regional Administrator upon request.

(b) *Transiting.* A scallop vessel may transit the EFH Closure Areas, as defined in § 648.81(h)(1), provided that its gear is stowed in accordance with the provisions of § 648.23(b), and that it complies with the transiting restrictions for the Closed Area II Habitat Closure Area specified in § 648.81(b)(2)(iv).

12. In § 648.81, paragraphs (a)(2)(vi), (b)(2)(v), and (c)(2)(iv) are added to read as follows:

**§ 648.81 NE multispecies closed areas and measures to protect EFH.**

(a) * * *

(2) * * *

(vi) Fishing for scallops within the Closed Area I Access Area defined in § 648.59(b)(3) during the season specified in § 648.59(b)(4), and pursuant to the provisions specified in § 648.60.

(b) * * *

(2) * * *

(v) Fishing for scallops within the Closed Area II Access Area defined in § 648.59(c)(3), during the season specified in § 648.59(c)(4), and pursuant to the provisions specified in § 648.60.

(c) * * *

(2) * * *

(iv) Fishing for scallops within the Nantucket Lightship Access Area defined in § 648.59(d)(3), during the season specified in § 648.59(d)(4), and pursuant to the provisions specified in § 648.60.

* * * * *

13. In § 648.85, paragraph (c) is added to read as follows:

**§ 648.85 Special management programs.**

* * * * *

(c) *Scallop fishery closed area access program.* Scallop vessels operating under the Sea Scallop Area Access Program, as defined in § 648.59, and fishing in accordance with the regulations at § 648.60 may possess and land up to 1,000 lb (453.6 kg) of all NE multispecies combined, as provided in § 648.60(a)(5)(ii), unless otherwise restricted in this section.

(1) *Yellowtail flounder bycatch TAC allocation.* An amount of yellowtail flounder equal to 10 percent of the total yellowtail flounder TAC for each of the stock area specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section may be harvested by scallop vessels. Limited access scallop vessels enrolled in the Sea Scallop Area Access Program and fishing within the Area Access areas defined at § 648.59(b) through (d) may harvest yellowtail flounder up to 9.8 percent of the applicable yellowtail flounder TAC. Scallop vessels participating in approved research under the process described in § 648.56, and fishing in the Access Areas specified in § 648.59(b) through (d), may harvest 0.2 percent of the applicable yellowtail flounder TAC. With the exception of the 0.2-percent yellowtail flounder TAC set-asides for approved research, the amount of yellowtail flounder that may be harvested in the 2004 through the 2006 fishing years under this section will be specified by permit holder letter/small entity compliance guides. The yellowtail flounder TAC set-aside for research are specified in § 648.60(e)(3).

(i) *SNE/MA yellowtail flounder.* Limited access scallop vessels may harvest an amount of yellowtail flounder equal to 9.8 percent of the overall SNE/MA yellowtail flounder TAC from the Nantucket Lightship Closed Area Sea Scallop Access Area for each fishing year, unless otherwise prohibited under paragraph (c)(3) of this section. An amount of yellowtail flounder equal to 0.2 percent of the SNE/MA yellowtail flounder bycatch TAC, as specified in paragraph (c)(1) of this section, is set aside to allow for the harvest of yellowtail flounder during research approved under the scallop research program specified in § 648.56 and conducted in the Access Areas specified in § 648.59(b) through (d).

(ii) *GB yellowtail flounder.* Limited access scallop vessels may harvest an amount of yellowtail flounder up to 9.8 percent of the overall GB yellowtail flounder TAC from the Closed Area I and Closed Area II Sea Scallop Access Areas, combined, for each fishing year, unless otherwise prohibited under paragraph (c)(3) of this section. An amount of yellowtail flounder equal to 0.2 percent of the GB yellowtail flounder TAC, as specified in paragraph (c)(1) of this section, is set aside to allow for the harvest of yellowtail flounder during research approved under the scallop research program specified in § 648.56.

(2) *Adjustments to the yellowtail flounder TAC allocation.* If, as of December 1, of each year, the Regional Administrator projects that the total GB yellowtail flounder TAC for the NE multispecies fishery will not be harvested by the end of the fishing year and the catch of yellowtail flounder in the Sea Scallop Area Access Program is below 10 percent of the GB yellowtail flounder bycatch TAC specified in paragraph (c)(1) of this section, the Regional Administrator may, through rulemaking consistent with the Administrative Procedure Act, increase the yellowtail flounder bycatch TAC allocated to vessels participating in the Sea Scallop Area Access Program above 10 percent, provided that such increase will not result in exceeding the total GB yellowtail flounder TAC.

(3) *Possession restriction and closure when yellowtail flounder TAC has been harvested.* (i) If the GB yellowtail flounder TAC specified for the U.S./Canada Management Area under paragraph (a)(2) of this section has been harvested and notification has been published in the **Federal Register**, pursuant to paragraph (a)(2)(iv)(C)(*3*) of this section, but the yellowtail flounder bycatch TAC allocation for the GB stock specified under paragraph (c)(1)(ii) of this section has not been harvested, scallop vessels may continue to fish in the Sea Scallop Area Access Program, but may not retain or land yellowtail flounder, until the yellowtail flounder bycatch TAC is caught, as specified in paragraph (c)(3)(ii) of this section. All catch of yellowtail flounder must continue to be reported by scallop vessels fishing in Access Area as required under § 648.60.

(ii) If the yellowtail flounder bycatch TAC allocation for the GB stock specified under paragraph (c)(1)(ii), of this section has been or is projected to be harvested, scallop vessels may not fish within the Closed Area I and II Access Areas for the remainder of the fishing year. The Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify vessels that they may no longer fish within the Closed Area I and II Access Areas for the remainder of the fishing year.

* * * * *

14. In § 648.88, paragraph (c) is revised to read as follows:

**§ 648.88 Multispecies open access permit restrictions.**

* * * * *

(c) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of yellowtail flounder on board the vessel does not exceed the trip limitations specified in § 648.86(g), and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

* * * * *

[FR Doc. 04–19474 Filed 8–25–04; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 69, No. 165

Thursday, August 26, 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

### Animal and Plant Health Inspection Service

**[Docket No. 03–046–2]**

### Pigeonpea Pod Fly; Availability of an Environmental Assessment and Finding of No Significant Impact

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the control of pigeonpea pod fly, *Melanagromyza obtusa* (Malloch) (Diptera: Agromyzidae). The environmental assessment documents our review and analysis of environmental impacts associated with alternatives for control of pigeonpea pod fly, as well as a recommendation for the use of biological control agents to suppress pigeonpea pod fly in the United States. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESSES:** Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dale Meyerdirk, Agriculturalist, National Biological Control Institute, PPQ, APHIS, 4700 River Road Unit 135, Riverdale, MD 20737–1236; (301) 734–5220.

**SUPPLEMENTARY INFORMATION:**

## Background

Pigeonpea pod fly, *Melanagromyza obtusa* (Malloch) (Diptera: Agromyzidae), is a foreign plant pest that attacks numerous species of plants. The potential host range appears to be primarily restricted to legumes such as peas and beans, with some questionable exceptions such as okra and sesame. This pest can easily spread without detection. When the female pigeonpea pod fly punctures the legume pod and lays its eggs within, the only external evidence is varying degrees of damage caused by the punctures.

The pest is found throughout the world, including India, Ceylon, Indonesia, the Philippines, Taiwan, Thailand, Vietnam, and as far north as Japan. It also occurs in the U.S. territory of Puerto Rico. Pigeonpea pod fly is acclimated to cooler, northern climates and can tolerate dry conditions for part of the year. Therefore, suitable habitat exists throughout the United States, and the potential geographical distribution of the pigeonpea pod fly in the contiguous United States is extensive. Pigeonpea pod fly could enter the contiguous United States, Hawaii, or other U.S. territories from Puerto Rico, the Dominican Republic, or countries in the Pacific and become a serious agricultural threat to the United States.

On May 23, 2003, we published in the **Federal Register** (68 FR 28191–28192, Docket No. 03–046–1) a notice in which we announced the availability, for public review and comment, of an environmental assessment documenting our review and analysis of environmental impacts associated with alternatives for control of pigeonpea pod fly, as well as a recommendation for the use of biological control agents (specifically, parasitic Chalcid wasps of the genera *Euderus*, *Eurytoma*, and *Ormyrus*) to suppress pigeonpea pod fly in the United States. Other alternatives examined in the environmental assessment included no action, pesticides, cultural control, crop modification, and integrated pest management (IPM).

We solicited comments on the environmental assessment for 30 days ending on June 23, 2003. We received one comment by that date, from a State agricultural agency. The commenter supported the use of biological control against the pigeonpea pod fly, but questioned whether biological control alone would provide a significant level of control or suppression in all cases. Acknowledging that increased pesticide use is not a viable alternative either, the commenter recommended an IPM approach as the best alternative.

We have updated the environmental assessment to explain that if the pigeonpea pod fly is introduced into new areas of the United States and the introduction of parasitic Chalcid wasps does not totally resolve the problem, then IPM in some form may be adopted to for use to gain satisfactory control of the pest population.

In this document, we are advising the public of APHIS' finding of no significant impact regarding the release of parasitic Chalcid wasps of the genera *Euderus*, *Eurytoma*, and *Ormyrus* to reduce the severity of pigeonpea pod fly in the United States, including its Pacific and Caribbean territories. The finding, which is based on the environmental assessment, reflects our determination that release of these biological control agents will not have a significant impact on the quality of the human environment.

You may request copies of the environmental assessment and finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 20th day of August 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–19518 Filed 8–25–04; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Willamette Province Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Willamette Province Advisory Committee (PAC) will meet in McKenzie Bridge, Oregon. The purpose of the meeting is to review projects planned and implemented under the Northwest Forest Plan (NFP) in the Central Cascades Adaptive Management Area. The specific topics to be covered at the meeting include research and NFP projects in the Central Cascades Adaptive Management Area.

**DATES:** The meeting will be held September 16, 2004.

**ADDRESSES:** The meeting will be held at the HJ Andrews Research Center on the Willamette National Forest. Send written comments to Neal Forrester, Willamette Province Advisory Committee, c/o Willamette National Forest, PO Box 10607, Eugene, Oregon 97440, (541) 225–6436 or electronically to *nforrester@fs.fed.us*.

**FOR FURTHER INFORMATION CONTACT:** Neal Forrester, Willamette National Forest, (541) 225–6436.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The Committee will meet at the Eugene District of the Bureau of Land Management at 8 a.m. on September 16 and travel to the HJ Andrews Research Center. The field trip is open to the public, but they must provide their own transportation. A public forum will be provided and individuals will have the opportunity to address the PAC at about 10 a.m. at the Research Center. Oral comments will be limited to three minutes. However, persons who wish to bring matters to the attention of the Committee may file written statements with the PAC staff before or after the meeting.

Dated: August 19, 2004.

**Dallas J. Emch**

*Forest Supervisor, Willamette National Forest.*

[FR Doc. 04–19512 Filed 8–25–04; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 36–2004]**

### Foreign-Trade Zone 243—Victorville, CA; Application for Subzone; Black & Decker Corporation (Power Tools, Lawn and Garden Tools, and Home Products Distribution); Rialto, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Southern California Logistics Airport Authority, grantee of FTZ 243, requesting special-purpose subzone status for the tools and home products warehousing/distribution facility of Black & Decker Corporation, in Rialto, California. The facility is located adjacent to the Los Angeles/Long Beach U.S. Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 19, 2004.

The Black & Decker facility (1 building, 543,000 sq. ft., 28.64 acres) is located at 1590 N. Tamarind Avenue within the I–210 Industrial Park in Rialto, California. The facility is currently under construction and is expected to be completed in early 2005. The facility (115 employees) is used for order fulfillment, repackaging, re-labeling, warehousing and distribution of hand-held tools and accessories; home products (including vacuums, flashlights and wet scrubbers); security hardware; plumbing products (including kitchen and bath faucets and accessories); and, fastening and assembly systems (including stud welding, specialty screws and related products and accessories); activities which Black & Decker is proposing to perform under FTZ procedures.

Zone procedures would exempt Black & Decker from Customs duty payments on products that are re-exported. Currently, some 3–5 percent of the products are re-exported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant and entered for consumption. Some 80 percent of the products are sourced abroad (average weighted duty rate—1.6%). FTZ designation would further allow Black & Decker to utilize certain Customs procedures resulting in increased efficiencies and cost reductions for its logistics and distribution operations. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

*1. Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

*2. Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is October 25, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 9, 2004).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 2940 Inland Empire Blvd., Suite 121, Ontario, CA 91764.

Dated: August 19, 2004.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 04–19531 Filed 8–25–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 082004A]**

### Proposed Information Collection; Comment Request; Scup Gear Restricted Area (GRA) Access Program Authorization

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, 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)).

**DATES:** Written comments must be submitted on or before October 25, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Sarah McLaughlin, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The regulations at 50 CFR 648.122 require that vessels that are subject to the provisions of the Southern and Northern Gear Restricted Areas may fish for, or possess, non-exempt species (*Loligo* squid, black sea bass and silver hake (whiting)) using trawl nets. The nets must have a minimum mesh size less than 4.5 inches (diamond mesh), provided that the following requirements are met:

1. The vessel carries on board all required Federal fishery permits and a Scup GRA Exemption Program Authorization issued by the Regional Administrator, Northeast Region;
2. The vessel carries a NMFS-certified observer on board if any portion of the trip will be, or is, in a GRA; and,
3. The vessel fishes in a GRA only with a specially modified trawl net that has an escapement extension consisting of a minimum of 45 meshes of 5.5–inch (13.97–cm) square mesh that is positioned behind the body of the net and in front of the codend.

## II. Method of Collection

To enroll in the Scup GRA Exemption Program, vessel owners are required to call the National Marine Fisheries Service Northeast Regional Office (NERO) Permits Office at (978) 281–9370, and provide the vessel name, permit number, mailing address, and the GRA (i.e., Southern or Northern) for which exemption is requested. The vessel must carry the Letter of Authorization (LOA) for the Scup GRA Exemption Program issued by the Regional Administrator. In addition, each vessel must obtain, pay for, and carry on board a NMFS-certified observer when fishing in a Scup GRA using the exempted gear. Vessel owners who enroll in the Program and request an LOA are required to make arrangements to obtain an observer for any trip that will be in a GRA by calling the NOAA-certified observer contractor a minimum of 5 business days in advance of the start of the trip, and providing the following information: Vessel name and permit number; captain or contact name and phone number; port of departure; and date of departure.

## III. Data

*OMB Number:* 0648–0469.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households; and business or other for-profit organizations.

*Estimated Number of Respondents:* 72.

*Estimated Time Per Response:* 2 minutes.

*Estimated Total Annual Burden Hours:* 890.

*Estimated Total Annual Cost to Public:* $482.

## IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 19, 2004,

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–19560 Filed 8–25–04; 8:45 am]

BILLING CODE 3510–22–S

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[Docket No. 040820243–4243–01; I.D. 071204A]**

## Western Pacific Demonstration Projects

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

**ACTION:** Notice of funding availability for Western Pacific Demonstration Project applications.

**SUMMARY:** NMFS is soliciting applications for financial assistance for Western Pacific Demonstration Projects. Eligible applicants are encouraged to submit projects intended to foster and promote the use of traditional indigenous fishing practices and/or to develop or enhance western Pacific community-based fishing opportunities that benefit the island communities in American Samoa, Guam, Hawaii, and the Northern Mariana Islands. Projects may also request support for research and the acquisition of materials and equipment necessary to carry out such project proposals.

**DATES:** Project proposals and completed grant applications must be received by 5 p.m. Hawaii standard time on October 25, 2004.

**ADDRESSES:** Project proposals and grant applications must be sent to: Federal Program Officer for Western Pacific Demonstration Projects, Pacific Islands Region, National Marine Fisheries Service, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

The full text of the funding opportunity announcement for this NMFS program can be accessed via the Grants.gov web site: *http://www.grants.gov*. This announcement will also be available at the NOAA web site: *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* or by contacting the program official identified in **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Scott Bloom (NMFS) at 808–973–2937, or by e-mail at *Scott.Bloom@noaa.gov*; or Charles Ka'ai'ai (Western Pacific Fishery Management Council), 808–522–8220 or by e-mail at *Charles.Kaaiai@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** NMFS is soliciting competitive applications for grants to eligible western Pacific communities to support fishery demonstration projects to foster and promote traditional indigenous fishing

practices. Funding priorities for Fiscal Years 2004 and 2005 are: (1) community education; (2) processing of fishery products and byproducts; (3) feasibility studies for participation in fishery and fishery related activities; (4) increase opportunities for participation in the Western Pacific Fishery Management Council (Council) activities and process; and (5) demonstrate traditional, cultural fishing practices. A detailed description for each program priority is in the funding opportunity announcement which can be accessed via the *Grants.gov* web site, the NOAA web site at *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* , or by contacting the program official identified in **FOR FURTHER INFORMATION CONTACT**. Applications must address one or more of the funding priorities identified above.

The Department of Commerce Pre-award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

*Electronic Access*

The full text of the funding opportunity announcement for this NMFS program can be accessed via the *Grants.gov* web site. This announcement will also be available at the NOAA web site: *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* or by contacting the program official identified under **FOR FURTHER INFORMATION CONTACT**. This **Federal Register** notice is available through the NMFS Pacific Islands Region (PIR) home page at: *http://swr.nmfs.noaa.gov/pir/index.htm*, and the Western Pacific Council home page at: *http://www.wpcouncil.org*.

*Funding Availability*

This solicitation announces the availability of $500,000 for Fiscal Year 2004 and prospective funding in the amount of $500,000 that may be available for Fiscal Year 2005. NMFS will select not less than three and not more than five applicants for each fiscal year. Applicants will be selected by NMFS on a competitive basis, as recommended by the Western Pacific Fishery Management Council. Funding for Fiscal Year 2005 is contingent upon the availability of appropriations.

*Statutory Authority*

The Secretary is authorized to make direct grants to eligible western Pacific communities pursuant to section 111(b) of Pub. L. 104–297, as amended, and published within 16 U.S.C. 1855 note.

*CFDA*

11.452, Unallied Industry Projects.

*Eligibility*

Eligible applicants are limited to communities in the Western Pacific Regional Fishery Management Area, as defined at section 305(i)(2)(D) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(i)(2)(D). Applicants also must meet the standards for determining eligibility set forth in section 305(i)(2)(B) of the Act, 16 U.S.C. 1855(i)(2)(B). The eligibility criteria developed by the Council and approved by the Secretary to participate in western Pacific community development programs was published in the **Federal Register** on April 16, 2002 (67 FR 18512 and 18513).

*Cost Sharing Requirements*

None

*Intergovernmental Review*

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*Limitation of Liability*

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Applicants are hereby given notice that funding for the Fiscal Year 2005 program is contingent upon the availability of Fiscal Year 2005 appropriations.

*Universal Identifier*

Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002, **Federal Register**, (67, FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet at *http://www.dunandbradstreet.com*.

*National Environmental Policy Act (NEPA)*

NOAA must analyze the potential environmental impacts, as required by NEPA, for applicant projects or proposals which are seeking NOAA Federal assistance. Detailed information on NOAA compliance with NEPA can be found at the following web site: *http://www.nepa.noaa.gov* including NOAA Administrative Order 216–6 for NEPA at *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations at *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*.

Consequently, as part of an applicant's package, and under the description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species, and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analysis, applicants may also be requested to assist NOAA in drafting an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

*Evaluation and Selection Procedures*

NOAA published its agency-wide solicitation entitled ''Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2005'' for projects and fellowships/scholarship/internships for Fiscal Year 2005 in the **Federal Register** on June 30, 2004 (69 FR 39417). The evaluation criteria and selection procedures for projects contained in that omnibus notice are applicable to this solicitation. Copies of the notice are available on the internet at: *http://www.ofa.noaa.gov%7Eamd/SOLINDEX.HTML*.

*Paperwork Reduction Act*

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A, 424B, and SF-LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject

to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

*Executive Order 12866*

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

*Executive Order 13132 (Federalism)*

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

*Administrative Procedure Act/ Regulatory Flexibility Act*

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: August 23, 2004.

**Rebecca Lent,**

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

[FR Doc. 04–19559 Filed 8–25–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 27, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

**Office of Elementary and Secondary Education**

*Type of Review:* Revision.

*Title:* Consolidated State Performance Report.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 14,452.

*Burden Hours:* 61,449.

*Abstract:* This information collection package contains the Consolidated State Performance Report (CSPR). It collects data that is required under section 1111 of the No Child Left Behind Act (NCLB) which mandates the requirements for the Secretary's report to Congress and information necessary for the Secretary to report on the Department's Government Performance and Results Act (GPRA) indicators.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2605. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Dated: August 23, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

[FR Doc. E4–1932 Filed 8–25–04; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**AGENCY:** Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of final extension of project period and waiver for the Center for Students With Disabilities Involved With and at Risk of Involvement With the Juvenile Justice System.

**SUMMARY:** The Secretary waives the requirements in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.250 and 75.261(a), that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This final extension of project period and waiver will enable the currently funded Center for Students With Disabilities Involved With and at Risk of Involvement With the Juvenile Justice System to receive funding from August 31, 2004 until August 31, 2005.

**DATES:** This notice is effective August 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** Renee Bradley, U.S. Department of Education, 400 Maryland Avenue, SW., room 4105, Potomac Center Plaza, Washington, DC 20202–2641. Telephone: (202) 245–7277 or via Internet: *renee.bradley@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** On July 28, 2004, we published a notice in the **Federal Register** (69 FR 45023) proposing an extension of project period and waiver in order to—

(1) Enable the Secretary to provide additional funds to the currently funded center for an additional 12-month period until August 30, 2005; and

(2) Request comments on the proposed extension and waiver.

There are no differences between the notice of proposed extension of project period and waiver and this notice of final extension of project period and waiver.

**Public Comment**

In the notice of proposed extension of project period and waiver, we invited comments. Eleven parties submitted comments in agreement with the proposal to extend the grant period of the current grantee. We did not receive any comments opposing the proposed extension of project period and waiver. Generally, we do not address technical and other minor changes, as well as suggested changes the law does not authorize us to make. Moreover, we do not address comments that do not express views on the substance of the notice of proposed extension of project period and waiver.

**Waiver of Delayed Effective Date**

The Administrative Procedure Act requires that a substantive rule shall be published at least 30 days before its effective date, except as otherwise provided for good cause (20 U.S.C. 553(d)(3)). During the 15-day public comment period on the notice of proposed extension of project period and waiver, eleven parties submitted comments in support of the proposed extension and waiver. There were no objections received on the proposed extension and waiver, and therefore, no substantive changes have been made. For this reason, and in order to make a timely continuation grant to the entity affected, the Secretary has determined that a delayed effective date is not required.

*Background:* On March 3, 1999, the Department published a notice in the **Federal Register** (64 FR 10352) inviting applications for a new award for a Center for Students With Disabilities Involved With and at Risk of Involvement With the Juvenile Justice System (Center) for fiscal year (FY) 1999. Based on that notice, the Department made one award for a period of 60 months to the University of Maryland to establish and operate the Center to provide guidance and assistance to States, schools, justice programs, families, and communities in designing, implementing, and evaluating comprehensive educational programs, based on research validated practices, for students with disabilities at risk of involvement or involved in the juvenile justice system. The Center focuses on three broad areas: (1) Prevention programs, (2) educational programs, and (3) reintegration or transition programs. The Center addresses these three areas through research, training, and technical assistance and dissemination. The Department is seeking additional support for a competition to be held in FY 2005, which would continue the work of the Center. However, the current grant period for the Center ends on August 31, 2004.

In order to ensure that the work of the Center will continue until a new award can be made, the Secretary waives 34 CFR 75.250 and 75.261(a) and issues a continuation award to the existing grantee for an additional twelve-month period.

The Center will continue dissemination and technical assistance activities including:

(a) Preparation and dissemination of information materials designed to increase awareness of and use of research validated practices to a variety of audiences (*e.g.*, educators, justice personnel, mental health personnel, judges, policymakers, families, and other service providers).

(b) Providing for information exchanges between researchers and practitioners who direct model programs and those seeking to design or implement model programs.

The Center will continue training activities including:

Funding at least three graduate students who have concentrations in special education or criminal justice to work as project research assistants for the Center. These students will assist with project facilitation and the Center's research and evaluation of programs.

The Center will also complete additional research activities as appropriate.

**Regulatory Flexibility Act Certification**

The Secretary certifies that the extension of the project period and waiver will not have a significant economic impact on a substantial number of small entities. The only entity that would be affected is the Center for Students With Disabilities Involved With and at Risk of Involvement With the Juvenile Justice System.

**Paperwork Reduction Act of 1995**

This extension of project period and waiver does not contain any information collection requirements.

**Intergovernmental Review**

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

*Electronic Access to This Document*: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: August 23, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant, Secretary for Special Education and Rehabilitative Services.*

[FR Doc. E4–1949 Filed 8–25–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC04–542–000; FERC–542]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 20, 2004.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of Section 3506(c) (2) (a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Comments on the collection of information are due by October 18, 2004.

**ADDRESSES:** Copies of the proposed collection of information can be

obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC04–542–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC–542 ''Gas Pipeline Rates: Rate Tracking (OMB No. 1902–0042) is used by the Commission to implement the statutory provisions of Title IV of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432, and Sections 4, 5 and 16 of the Natural Gas Act (NGA) (P.L. 75–688)(15 U.S.C. 717–717w). These statutes empower the Commission to collect natural gas transmission cost information from interstate natural gas transporters for the purpose of verifying that these costs which are passed on to pipeline customers, are just and reasonable. Interstate natural gas pipelines are required by the Commission to track their transportation associated costs to allow for the Commission's review and where appropriate, approval of the pass through of these cost to pipeline customers. Most of these FERC–542 tracking filings are monthly accountings of the cost of fuel or electric power necessary to operate compressor stations. Others track the costs of (1) Gas Research Institute fees; (2) annual charges of various types, and (3) other types of rate adjustments.

Tracking filings may be submitted at any time or on a regularly scheduled basis in accordance with the pipeline company's tariff. Filings may be either: (1) Accepted; (2) suspended and set for hearing; (3) suspended, but not set for hearing; or (4) suspended for further review, such as technical conference or some other type of Commission action. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 154, §§ 154.4, 154.7, 154.101, 154.107, 154.201, 154.207–154.209 and 154.401–154.403.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 57 | 3 | 140 | 23,940 |

The estimated total cost to respondents is $1,233,658 (23,940 hours divided by 2,080 hours per employee per year times $107,185 per year average salary (including overhead) per employee (rounded off)).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1935 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC04–546–000; FERC–546]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 20, 2004.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is

soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Comments on the collection of information are due by October 18, 2004.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC04–546–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact(202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC–546 ''Certificated Rate Filings: Gas Pipeline Rates'' (OMB No. 1902–0155) is used by the Commission to implement the statutory provisions of Title IV of the Natural Gas Policy Act (NGPA) (15 U.S.C. 3301–3432) and Sections 4, 5, and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). The Commission has the regulatory responsibility under these Acts to ensure that pipeline rates and services are just and reasonable and not unduly discriminatory. Accordingly, jurisdictional natural gas pipeline companies are required to obtain Commission approval for all rates and charges made, or demanded, in connection with the transportation or sale of natural gas in interstate commerce.

Service and tariff revision information necessary for Commission examination and subsequent approval of any certificated pipeline *change in service* is collected under FERC–546. (Information necessary to examine and approve any *change in rates* is collected separately under FERC–542 for tracking filings (non-formal), and FERC–544 and FERC–545 for general rate change filings, including NGA Section 4 major rate filings (formal and non-formal respectively)). The required FERC–546 information is set forth in each pipeline's tariff, and must be filed in compliance with Commission regulations found in 18 CFR Part 154.4; 154.7; 154.202; and 154.204–.209; and 154.602–.603.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 77 | 4 | 40 | 12,320 |

The estimated total cost to respondents is $634,865 (12,320 hours divided by 2,080 hours per employee per year times $107,185 per year average salary (including overhead) per employee (rounded off)).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.,* permitting electronic submission of responses.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1936 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC04–556–000; FERC Form 556]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 20, 2004.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Comments on the collection of information are due by October 18, 2004.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filing/hard-fil-elec.asp* or click on ''Documents and Filing'', ''Hardcopy filing'' and then ''Electric''. Applicants for self-certification have to create their own form.) Written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC04–556–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC Form No.556 ''Cogeneration and Small Power Production'' (OMB No. 1902–0075) is used by the Commission to implement the statutory provisions of Section 3 of the Federal Power Act (FPA), (16 U.S.C. 792–828c), and Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The reporting requirements associated with FERC Form 556 require owners or operators of small power production or cogeneration facilities, who seek qualifying status for their facilities, to file the information requested in Form 556 for Commission certification as a qualifying facility (QF).

A primary objective of PURPA is the conservation of energy through efficient use of energy resources in the generation of electric power. One means of achieving this objective is to encourage electric power production by cogeneration facilities which make use of reject heat associated with commercial or industrial processes, and by small power production facilities which use waste and renewable resources as fuel. PURPA, through the establishment of various regulatory benefits, encourages the development of small power production facilities and cogeneration facilities which meet certain technical and corporate criteria. Facilities that meet these criteria are called QF's.

Owners and operators of small power production and cogeneration facilities desiring QF certification for their facilities must file the information prescribed in FERC Form 556 with the Commission. In addition to identifying the required filing information, FERC Form 556 also outlines the QF certification procedure, and specifies the criteria which must be met for QF certification. The Commission's QF regulations are published at 18 CFR Part 292. Respondents who comply with the FERC Form 556 criteria and are granted QF certification by the Commission are exempt from certain sections of the FPA and the Public Utility Holding Company Act of 1935 as listed in 18 CFR 292.601 and 292.602.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually* (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)x(2)x(3) |
|---|---|---|---|
| FERC Form 556–FERC Certification 27 | 1 | 4 | 108 |
| Self Certification 270 | 1 | 38 | 10,260 |
| Totals 297 | 1 | 42 | 10,368 |

*The Commission has found that 90% of the applications for certification are submitted using the self certification process as opposed to completing the FERC Form 556 (having the Commission review and prepare the certification process).

The estimated total cost to respondents is $534,276 (10,368 hours divided by 2,080 hours per employee per year times $107,185 per year average salary (including overhead) per employee (rounded off)).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance

of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1937 Filed 8–25–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PR04–9–000]**

### Bay Gas Storage Company, Ltd.; Notice of Staff Panel

August 19, 2004.

Take notice that a Staff Panel shall be convened in accordance with the Commission order [1] in the above-captioned docket to allow opportunity for written comments and for the oral presentation of views, data, and arguments regarding the fair and equitable rates to be established for transportation service under section 311 of the Natural Policy Act of 1978 on Bay Gas Storage Company, Ltd.'s system. The Staff Panel will not be a judicial or evidentiary-type hearing and there will be no cross-examination of persons presenting statements. Members participating on the Staff Panel before whom the presentations are made may ask questions. If time permits, Staff Panel members may also ask such relevant questions as are submitted to them by participants. Other procedural rules relating to the panel will be announced at the time the proceeding commences.

The Staff Panel will be held on Tuesday, September 21, 2004, at 10 a.m. (EST) in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1944 Filed 8–25–04; 8:45 am]

BILLING CODE 6717–01–P

[1] *See Bay Gas Storage Company, Ltd.,* 108 FERC ¶ 61,161 (2004).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–459–000]**

### CenterPoint Energy—Mississippi River Transmission Corporation; Notice Of Tariff Filing

August 19, 2004.

Take notice that on August 17, 2004, CenterPoint Energy-Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective October 1, 2004:

Fifty-Second Revised Sheet No. 5;
Fifty-Second Revised Sheet No. 6;
Forty-Ninth Revised Sheet No. 7; and
Twenty-First Revised Sheet No. 8.

MRT states that the purpose of this filing is: (1) To comply with the Commission's order issued January 16, 2002 in Docket No. RP01–292, MRT is filing to implement the Period Three Settlement Rates to be effective October 1, 2004 through September 30, 2005; and (2), to revise the Annual Charge Adjustment (ACA) rate effective October 1, 2004.

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 § 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. E4–1942 Filed 8–25–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

August 20, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use Of Project Lands And Waters.

b. *Project No:* 2413–063.

c. *Date Filed:* July 15, 2004.

d. *Applicant:* Georgia Power.

e. *Name of Project:* Wallace Dam Project.

f. *Location:* This project is located on the Oconee River in Putnam, Hancock, Greene, Morgan, Oconee, and Oglethorpe Counties, Georgia, and occupies lands of the Oconee National Forest. This project does not occupy any tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and sections 799 and 801.

h. *Applicant Contact:* Mr. Lee B. Glenn; Lake Resources Manager for Georgia Power; 125 Wallace Dam Road, NE.; Eatonton, Georgia, 31024; 706–485–8704.

i. *FERC Contact:* Any questions on this notice should be addressed to Andrea Shriver at (202) 502–8171, or by e-mail: *andrea.shriver@ferc.gov.*

j. *Deadline for filing comments and or motions:* September 20, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2197–068) 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.

k. *Description of Request:* Georgia Power is seeking Commission approval to issue a commercial lease to Linger Long Development Corporation for the construction of a private marina on Lake Oconee. The proposed marina would be located on the Richland Creek section of the lake, immediately adjacent to the Armor Bridge Public Boat Ramp. It will be primarily for use of residents within the Reynolds Plantation development, but will also be available for emergency assistance to the general public. This facility will initially include dry-stack storage for 192 boats, and provisions to expand the facility's dry-stack storage capacity to 350 boats. Other facilities at the marina would include a boat ramp, forklift launch, a 24 slip dock and dockside fueling slips. Proposed facilities within the project boundary include a boatlift launch, boat ramp, floating fuel docks and fuel pump, stationary dock, seawall, rip-rap, and portions of a retaining wall. Proposed facilities outside of the project boundary include dry-stack storage, an underground fuel storage unit, and portions of a retaining wall.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications 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. E4–1939 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER04–1035–000; ER04–1035–001]**

### IDT Energy, Inc.; Notice of Issuance of Order

August 20, 2004.

IDT Energy, Inc. (IDT Energy) filed an application, as amended, 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. IDT Energy also requested waiver of various Commission regulations. In particular, IDT Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by IDT Energy.

On August 19, 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 IDT Energy 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 20, 2004.

Absent a request to be heard in opposition by the deadline above, IDT Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of IDT Energy, 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 IDT Energy'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. E4–1934 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 7528–004]**

### Public Service Company of New Hampshire; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

August 20, 2004.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Pre-Application Document; Commencing Licensing Proceeding.

b. *Project No.:* 7528–004.

c. *Dated Filed:* August 2, 2004.

d. *Submitted By:* Public Service Company of New Hampshire (PSNH).

e. *Name of Project:* Canaan Hydroelectric Project.

f. *Location:* On the northern Connecticut River in Coos County, New Hampshire and Essex County, Vermont. The project does not occupy any federal lands.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Mr. James J. Kearns, Project Manager, Public Service Company of New Hampshire, 780 North Commercial Street, Manchester, NH 03101; (603) 502–6236.

i. *FERC Contact:* Kristen Murphy (202) 502–6236 or e-mail at *kristen.murphy@ferc.gov.*

j. We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o. below.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Public Service Company of New Hampshire as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Public Service Company of New Hampshire filed a Pre-Application Document (PAD); including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. Copies of the PAD and Scoping Document 1 (SD1) are available for review at the Commission in the Public Reference Room or may 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and SD1 as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Canaan Hydroelectric Project) and number (P–7528–004), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by October 22, 2004.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

p. At this time, Commission staff intends to prepare a single Environmental Assessment for the project, in accordance with the National Environmental Policy Act.

#### Scoping Meetings

We will hold two scoping meetings at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

#### Daytime Scoping Meeting

*Date and Time:* Monday, September 20, 9:30 a.m. (EST).

*Location:* PSNH 5 Rivers Auditorium, PSNH's Energy Park Corporate Headquarters, 780 North Commercial Street, Manchester, New Hampshire.

*For Directions:* Please call Mr. James Kearns of PSNH at (603) 634–2936.

#### Evening Scoping Meeting

*Date and Time:* Tuesday, September 21, 7:00 p.m. (EST).

*Location:* Canaan Schools, Elementary Building Multipurpose Room (cafeteria), 99 School Street, Canaan, Vermont.

*For Directions:* Please call the Canaan Schools at (802) 266–8910.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Depending on the extent of comments received, a Scoping Document 2 (SD2) may or may not be issued.

#### Site Visit

PSNH will conduct a tour of the project on Tuesday, September 21, 2004, starting at 3 p.m. All participants interested in attending should meet at the Canaan project's powerhouse, located on Powerhouse Road in Canaan,

Vermont. Anyone in need of directions to the powerhouse should contact Mr. James Kearns of PSNH at (603) 634–2936.

**Scoping Meeting Objectives**

At the scoping meetings, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss requests by any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the Pre-Application Document in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

**Meeting Procedures**

The meetings will be recorded by a stenographer and will become part of the formal Commission record on the project.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1933 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EL00–95–109 and EL00–98–096]**

### San Diego Gas & Electric Company, Complainant v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Compliance Filing

August 20, 2004.

Take notice that on August 17, 2004, California Independent System Operator Corporation submitted a compliance filing detailing its proposed methodology for allocating fuel cost allowance amount during the October 2, 2000 through June 20, 2001 period.

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 August 30, 2004.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1948 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–396–000]**

### Transcontinental Gas Pipe Line Corporation; Notice of Application

Issued: August 20, 2004.

Take Notice that on August 11, 2004, Transcontinental Gas Pipe Line Corporation (Transco), PO Box 1396, Houston, Texas 77251, filed in Docket No. CP04–396–000 an application pursuant to section 7 of the Natural Gas Act (NGA), as amended, seeking authorization to construct and operate Transco's Central New Jersey Expansion Project, a 3.77 mile, 36-inch loop in Burlington County, New Jersey. 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 ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online at *FERCOnlineSupport@ferc.gov* or toll free, (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Bill Hammons, P.O. Box 1396, Houston Texas 77251, (713)215–2130 or (866)857–7094.

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 file on or before the date listed below 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.

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 Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

*Comment Date:* September 10, 2004.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1940 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Amendment of Recreation Plan and Change in Project Land Rights and Soliciting Comments, Protests, and Motions To Intervene

August 19, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Approved Recreation Plan and Change in Project Land Rights.

b. *Project Number:* P–2113–154.

c. *Date Filed:* July 11, 2003; revised March 15, 2004.

d. *Applicant:* Wisconsin Valley Improvement Company (WVIC).

e. *Name of Project:* Wisconsin Valley (Reservoirs).

f. *Location:* The project is located on the Wisconsin River and Headwater Tributaries in Gogebic County, Michigan and Vilas, Forest, Oneida, Lincoln, and Marathon Counties, Wisconsin. This proposal will not affect any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contacts:* Robert Gall, President, Wisconsin Valley Improvement Company, 2301 North Third Street, Wausau, Wisconsin 54403; phone: (715) 848–2976

i. *FERC Contact:* Any questions on this notice should be addressed to Steve Naugle at (202) 502–6061, or by e-mail: *steven.naugle@ferc.gov.*

j. *Deadline for filing comments and or motions:* September 20, 2004.

k. *Description of the Application:* WVIC, licensee for the Wisconsin Valley (Reservoirs) Project, proposes to: (1) Convey 35.8 acres of project land to the Wisconsin Department of Natural Resources (WDNR); and (2) amend the project's recreation plan by replacing the approved but not constructed facilities at Sites 1 and 2 at Willow Reservoir with facilities compatible with the WDNR's Willow Flowage Scenic Waters Area Master Plan. The proposed conveyance would: (1) require the WDNR to hold and manage the conveyed lands in perpetuity only for public use and resource protection, consistent with the terms and conditions of the project license; and (2) reserve to WVIC the right to monitor WDNR's compliance with the covenants contained in the conveyance and to take any lawful action necessary to ensure such compliance. The conveyed lands would remain within the project boundary.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–2113–154). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., 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 representatives.

q. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1943 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–457–000]**

### Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

August 19, 2004.

Take notice that on August 16, 2004, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, to become effective September 16, 2004:

Twelfth Revised Sheet No. 35;
Fifth Revised Sheet No. 46;
Second Revised Sheet No. 82B.

WIC states that these tariff sheets are filed to revise references to marketing affiliates and electronic bulletin board (EBB) posting requirements in conformance with the Commission's Order No. 2004.

WIC states that copies of its filing have been sent to all firm customers, interruptible customers, and affected 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 § 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. E4–1945 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–458–000]**

### Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

August 19, 2004.

Take notice that on August 16, 2004, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No 2, Twelfth Revised Sheet No. 4B, to become effective September 1, 2004.

WIC states that the tendered tariff sheet reduces the fuel charges applicable to transportation service on WIC's system.

WIC states that copies of its filing have been sent to all firm customers, interruptible customers, and affected 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. E4–1946 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–2355–013, *et al.*]**

### Southern California Edison Company, et al.; Electric Rate and Corporate Filings

August 19, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Southern California Edison Company**

[Docket Nos. ER97–2355–013, ER98–1261–005, and ER98–1685–004]

Take notice that, on August 13, 2004, Southern California Edison Company, submitted a compliance filing relating to its wholesale transmission revenue requirement and wholesale transmission rates pursuant to Opinion No. 445 issued July 26, 2000 in Docket No. ER97–2355–000, *et al.*, 92 FERC ¶ 61,070 (July 26, 2000).

SCE states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

*Comment Date:* 5 p.m. Eastern Time on September 3, 2004.

**2. Pacific Gas and Electric Company**

[Docket No. ER03–1091–005]

Take notice that on August 13, 2004, Pacific Gas and Electric Company (PG&E) submitted for filing a compliance filing pursuant to the Commission's order issued June 1, 2004 in Docket No. ER03–1091–000, *et al.* a revised Generator Special Facilities Agreement. The filing is designated as First Revised Service Agreement No. 42 under PG&E's FERC Electric Tariff, Sixth Revised Volume No. 5.

PG&E states that copies of this filing have been served upon the parties of record in FERC Docket Nos. ER03–1091–004, Duke Energy Morro Bay, LLC, the California Independent System Operator Corporation, and the California Public Utilities Commission.

*Comment Date:* 5 p.m. Eastern Time on September 3, 2004.

**3. Entergy Services, Inc.**

[Docket No. ER03–1272–003]

Take notice that, on August 13, 2004, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. submitted a compliance filing pursuant to the Commission's July 12, 2004 order in Docket No. ER03–1272–002, 108 FERC ¶ 61,046 (2004).

Entergy Services, Inc. states that copies of the filing were served on parties on the official service list in Docket No. ER03–1272–003.

*Comment Date:* 5 p.m. Eastern Time on September 3, 2004.

**4. FirstEnergy Service Company**

[Docket No. ER03–1276–002]

Take notice that on August 13, 2004, FirstEnergy Service Company (FirstEnergy) tendered for filing a report showing that certain entities which had previously been transmission service customers of American Transmission Systems, Incorporated had made arrangements to obtain transmission service from the Midwest Independent Transmission System Operator, Inc. FirstEnergy states that its report was made in compliance with an order issued in Docket No. ER03–1276–000 on October 24, 2003, 105 FERC ¶ 61,113 (2003).

*Comment Date:* 5 p.m. Eastern Time on September 3, 2004.

**5. Pacific Gas and Electric Company**

[Docket No. ER04–215–001]

Take notice that on August 3, 2004, Pacific Gas and Electric Company (PG&E) submitted a refund report in compliance with Commission's order issued on April 16, 2004 in Docket No. ER04–215–000, 107 FERC ¶ 61,033.

PG&E states that copies of this filing have been served upon the City and County of San Francisco, the California Independent System Operator Corporation, and the California Public Utilities Commission.

*Comment Date:* 5 p.m. Eastern Time on August 27, 2004.

**6. American Electric Power Service Corporation**

[Docket No. ER04–499–002]

Take notice that on July 15, 2004, American Electric Power Service Corporation on behalf of the operating companies of the American Electric Power System (collectively AEP) submitted Fifth Revised Service Agreement No. 179 under AEP's FERC Electric Tariff, Third Revised Volume No. 6, a Network Integration Transmission Service Agreement (NITSA) between AEP and American Municipal Power—Ohio, Inc. AEP requests an effective date of January 1, 2004 for the NITSA.

*Comment Date:* 5 p.m. Eastern Time on August 30, 2004.

**7. Wheelabrator Westchester, L.P.**

[Docket No. ER04–1013–001]

Take notice that on August 13, 2004, Wheelabrator Westchester, L.P., (Westchester) tendered for filing an amendment to its July 13 and 14, 2004 filing Docket No. ER04–1013–000.

*Comment Date:* 5 p.m. Eastern Time on September 3, 2004.

**8. San Diego Gas & Electric Company**

[Docket No. ER04–1048–001]

Take notice that on August 13, 2004, San Diego Gas & Electric Company (SDG&E) tendered for filing a supplement to its July 28, 2004 filing in Docket No. ER04–1048–000 of Service Agreement No. 19 to its FERC Electric Tariff, First Revised Volume No. 6. Service Agreement No. 19. SDG&E states that the supplement is Appendix B to Service Agreement No. 19, which comprises five non-critical Energy Infrastructure Information interconnection figures.

SDG&E states that copies of the filing have been served on the San Diego County Water Authority, on the California Independent System Operator Corporation and on the California Public Utilities Commission.

*Comment Date:* 5 p.m. Eastern Time on September 3, 2004.

**9. Avista Corporation**

[Docket No. ER04–1076–001]

Take notice that on August 12, 2004, Avista Corporation submitted a Certificate of Concurrence in lieu of filing, to the July 30, 2004 filing by PacifiCorp regarding Annual Methods and Procedures for Operating Year 2004–05 amending the 1997 Pacific Northwest Coordination Agreement, as amended by Amendatory Agreement No. 1.

*Comment Date:* 5 p.m. Eastern Time on September 2, 2004.

**10. Conectiv Energy Supply, Inc.**

[Docket No. ER04–1125–000]

Take notice that, on August 13, 2004, Conectiv Energy Supply, Inc. (CESI) filed as a Service Agreement to its Market Based Rate Tariff a contract under which CESI provides full requirements service to a portion of Delmarva Power & Light Company's retail residential load under the Maryland Standard Offer Service program.

CESI states that the filing was served on the Maryland Public Service Commission.

*Comment Date:* 5 p.m. Eastern Time on September 3, 2004.

**11. San Diego Gas & Electric Company**

[Docket No. ER04–1126–000]

Take notice that on August 13, 2004, San Diego Gas & Electric Company (SDG&E) tendered for filing its Annual Transmission Formula Rate Change filing.

SDG&E states that copies of the filing were served on the California Public Utilities Commission, the California Independent System Operator Pacific Gas & Electric Company, Southern California Edison Company, and other participating transmission owners that have transferred operational control over their transmission facilities and entitlements to the California Independent System Operator, and all other parties on the service lit in Docket No. ER03–601–000.

*Comment Date:* 5 p.m. Eastern Time on September 3, 2004.

**12. PJM Interconnection, L.L.C.**

[Docket No. ER04–1127–000]

Take notice that on August 13, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing Original Service Agreement No. 1127 under PJM's FERC Electric Tariff Sixth Revised Volume No. 1, an executed interconnection service agreement among PJM, Armstrong Energy Limited Partnership, L.L.P., and Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power. PJM also submitted a notice of cancellation of an interim interconnection service agreement that has been superseded. PJM requests an effective date of July 15, 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 3, 2004.

**13. Southwest Power Pool, Inc.**

[Docket No. ER04–1128–000]

Take notice that on August 13, 2004, Southwest Power Pool, Inc. (SPP) submitted for filing Service Agreement No. 1043 under SPP's FERC Electric Tariff Fourth Revised Volume No. 1, an executed service agreement for Network Integration Transmission Service and an executed Network Operating Agreement with Southwestern Public Service Company (Southwestern). SPP requests an effective date of July 15, 2004.

SPP states that Southwestern was served with a copy of this filing.

*Comment Date:* 5 p.m. Eastern Time on September 3, 2004.

**14. Kentucky Utilities Company**

[Docket No. ER04–1129–000]

Take notice that on August 13, 2004, Kentucky Utilities (KU) a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet Nos. 8, 9 and 10 to KU's Rate Schedule No. 310, an amendment to the contract between KU and the City of Bardstown, Kentucky.

*Comment Date:* 5 p.m. Eastern Time on September 3, 2004.

**15. Avista Corporation**

[Docket No. ER04–1130–000]

Take notice that on August 13, 2004, Kentucky Utilities (KU), a subsidiary of LG&E Energy LLC, tendered for filing Original Sheet No. 8 to KU's Rate Schedule No. 300, an amendment to the contract between KU and the City of Owensboro, Kentucky.

*Comment Date:* 5 p.m. Eastern Time on September 3, 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 email 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. E4–1941 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2100–119 California]**

### California Department of Water Resources; Notice of Availability of Final Environmental Assessment

August 19, 2004.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission or FERC) regulations (18 CFR Part 380), the Commission staff reviewed an application for amendment to the approved recreation plan for the Feather River Project (FERC Project No. 2100) and prepared a final environmental assessment (FEA) on the application. The project is located on the Feather River in Butte County, California, near the city of Oroville.

Specifically, the project licensee, the California Department of Water Resources, requested that the Commission amend the approved recreation plan for the project to allow shared use of certain recreational trails within the project boundaries. In the FEA, the Commission staff analyzes the probable environmental effects of the proposed amendment and concludes that the proposal should not be approved at this time.

The FEA is attached to a Commission order titled ''Order Denying Request to Amend Recreation Plan,'' which was issued August 17, 2004, and is available for review in the Commission's Public Reference Room located at 888 First Street, NE., Room 2A, Washington, DC 20426. The FEA also may be viewed on the Commission's website (*http://www.ferc.gov*) using the ''eLibrary'' link. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–8004. You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

Any comments on the FEA should be filed within 30 days of the date of this notice and should be addressed to Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference ''Feather River Project, FERC Project No. 2100–119'' on all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1947 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2090–003]**

### Green Mountain Power Corporation; Notice of Availability of Environmental Assessment

August 20, 2004.

In accordance with the National Environmental Policy Act of 1969 and part 380 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380; FERC Order No. 486 and 52 FR 47,897, the Office of Energy Projects Staff (staff) reviewed the application for a new license for the Waterbury Hydroelectric Project, located on the Little River in the town of Waterbury in Washington County, Vermont, and prepared an environmental assessment (EA) for the project. The project does not use or occupy any federal facilities or lands.

In this EA, the staff analyzes the potential environmental effects of the existing project and concludes that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1938 Filed 8–25–04; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OW–2004–0030, FRL–7806–9]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Establishing No-Discharge Zones Under Clean Water Act Section 312, EPA ICR Number 1791.04, OMB Control Number 2040–0187

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document 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 approved collection. This ICR is scheduled to expire on 10/31/2004. 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 OW–2004–0030, to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Water Docket, mail code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Steven D. Giordano, Office of Water, 4504T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1272; fax number: (202) 566–1546; e-mail address: *giordano.steven@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number OW–2004–0030, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET 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, 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 State, Tribal, and local governments.

*Title:* Establishing No-Discharge Zones Under Clean Water Act section 312.

*Abstract:* (A) Sewage No-discharge Zones: The need for EPA to obtain information for the establishment of no-discharge zones (NDZs) for vessel sewage in State waters stems from CWA sections 312(f)(3), (f)(4)(A), and (f)(4)(B), and subsequent regulations at 40 CFR part 140.4(a–c). NDZs are established to provide State and local governments with additional protection of waters from treated or untreated vessel sewage. There are 3 ways in which NDZs for vessel sewage can be established. This ICR discusses the information requirements associated with the establishment of NDZs for vessel sewage. The responses to this collection of information are required to obtain the benefit of a sewage NDZ (*see* 33 U.S.C. 1322). The information collection activities discussed in this ICR do not require the submission of any confidential information.

(B) UNDS No-discharge Zones: Under section 312(n) of the Clean Water Act (''Uniform National Discharge Standards for Vessels of the Armed Forces'' or ''UNDS'') NDZs for discharges from Armed Forces vessels may be established by either State prohibition or EPA prohibition following the procedures in 40 CFR Part 1700. UNDS also provides that the Governor of any State may petition EPA and the Secretary of Defense to review any determination or standard promulgated under the UNDS program if there is significant new information that could reasonably result in a change to the determination or standard. This ICR discusses the information that will be required from a State if it decides to establish a NDZ by State prohibition or apply for a NDZ by EPA prohibition, and the information that will be required from a State if it decides to submit a petition for review. The responses to this collection of information are required to obtain the benefit of an UNDS NDZ or a review of an UNDS determination or standard (*see* 33 U.S.C. 1322(n)). The information collection activities discussed in this ICR do not require the submission of any confidential 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.

*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 16 States may wish to establish NDZs. The annual public reporting and record keeping burden for this collection of information is estimated to average 168 hours or $6,850 per response, assuming an average labor rate for the likely range of personnel involved in responding. 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 20, 2004.

**Craig E. Hooks,**

*Acting Director, Office of Wetlands, Oceans, and Watersheds.*

[FR Doc. 04–19524 Filed 8–25–04; 8:45 am]

BILLING CODE 6560–50–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 20, 2004.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

*Eastern Bank Corporation*, Boston, Massachusetts; to merge with, and thereby acquire voting shares of Plymouth Bancorp, Inc., Middleboro, Massachusetts, and thereby acquire Plymouth Savings Bank, Wareham, Massachusetts.

**B. Federal Reserve Bank of Cleveland** (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

*1. S&T Bancorp, Inc.*, Indiana, Pennsylvania; to acquire up to 24.99 percent of the voting shares of Allegheny Valley Bancorp, Inc., Pittsburgh, Pennsylvania, and thereby indirectly acquire voting shares of Allegheny Valley Bank, Pittsburgh, Pennsylvania.

**C. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. Cygnet Financial Corporation*, Ponte Vedra Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Cygnet Private Bank, Ponte Vedra Beach, Florida.

**D. Federal Reserve Bank of Kansas City** (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Timberline Bancorporation*, Grand Junction, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Timberline Bank, Grand Junction, Colorado (in organization).

Board of Governors of the Federal Reserve System, August 23, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–19555 Filed 8–25–04; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Council for the Elimination of Tuberculosis

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

*Name:* Advisory Council for the Elimination of Tuberculosis (ACET).

*Times and Dates:* 8:30 a.m.–5 p.m., October 6, 2004. 8:30 a.m.–12 p.m., October 7, 2004.

*Place:* Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333. Telephone: (404) 639–8008.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Purpose:* This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis (TB). Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating TB.

*Matters to be Discussed:* Agenda items include issues pertaining to improving TB prevention and control in community health centers, collaboration between TB control and public health preparedness programs, and nucleic acid amplification testing (NAAT). Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 19, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–19511 Filed 8–25–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Methylation Inhibitor Compounds**

Victor Marquez *et al.* (NCI).
U.S. Provisional Application No. 60/547,902
Filed 25 Feb 2004
(DHHS Reference No. E–074–2004/0–US–01).
*Licensing Contact:* Jeff Walenta; 301/435–4633; *walentaj@mail.nih.gov.*

Aberrant *de novo* DNA methylation is commonly associated with cancer. Several studies have shown that *de novo* methylation of tumor suppressor genes can lead to silencing of these genes and abnormal growth of cancer cells. Therefore, DNA methylation inhibitors may be used in cancer therapy to modulate hypermethylation of genes and to reactivate anti-proliferative, apoptotic and differentiation-inducing genes in cancer cells. Although some compounds have been proposed for use as DNA methylation inhibitors, these compounds are chemically instable, have weak potency and can generate toxic metabolites, thus preventing them being used as therapeutic agents.

The present invention relates to compositions and compounds that are useful as DNA methylation inhibitor compounds. The invention also relates to a method, using these compositions and compounds, of treating various cancers having a silenced tumor suppressor gene, and a method of treating a DNA-methylation-mediated disease. These compounds are generally chemically stable, non-toxic and may be administered orally or by injection. A method of making a compound is described.

These compounds seem to have a better therapeutic profile than another published DNA methylation inhibitor, Zebularine.

**A Combined Immunosuppressive Therapy Consisting of Glucocorticoid and rIL–2**

Xin Chen *et al.* (NCI).
U.S. Provisional Application No. 60/515,217
Filed 27 Oct 2003
(DHHS Reference No. E–211–2003/0–US–01).
*Licensing Contact:* Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov*.

The invention is a combination immunosuppressive therapeutic regimen consisting of a glucocorticoid and rIL–2. The combination minimizes the side effects associated with glucocorticoid treatment, and is useful in inhibiting or treating inflammation, immune-mediated disorders, and transplant rejection. The treatment regimen at once promotes cell death of CD4+CD25– T effector cells, including cytotoxic T cells, and expansion of inhibitory Foxp3+CD4–CD25+ T regulatory ($T_{reg}$) cells. This regimen involves application of both glucocorticoid and IL–2, and is based on the surprising observation that IL–2 selectively protects $T_{reg}$ cells from glucocorticoid-induced cell death. As $T_{reg}$ cells inhibit CD4+CD25– T cells, the effect of combined glucocorticoid/IL–2 therapy is to enhance the immunosuppressive effect of the glucocorticoids. In this context, glucocorticoids and IL–2 act synergistically to suppress cellular immune responses.

**Production of Adeno-Associated Viruses in Insect Cells**

Robert M. Kotin *et al.* (NHLBI).
U.S. Patent No. 6,723,551
Issued 20 April 2004
(DHHS Reference No. E–325–2001/1–US–01).
*Licensing Contact:* Jeff Walenta; 301/435–4633; *walentaj@mail.nih.gov*.

Adeno-associated virus (AAV) is being developed for gene therapy applications. This virus type presents several advantages over alternate vectors for therapeutic gene delivery. AAV is not considered pathogenic and transduces stably dividing and non-dividing cells. AAV also shows good serotype specificity to various cell types for targeted gene delivery.

The present invention describes a highly scalable adeno-associated virus (AAV) vector production method in insect cells. The system for producing recombinant AAV (rAAV) uses the AAV Rep protein and an AAV ITR. This production method produces virus particles much more efficiently than the standard mammalian cell culture system. Yields of rAAV produced in Sf9 cells exceed 10e15 per liter for some constructs. The improvement in production efficiency translates into lower production costs and potential for commercial scale manufacturing. In addition, all serotypes of AAV can be produced, with the respective AAV serotype vectors available for the immediate scale up of AAV production.

This technology will give a company producing large quantities of AAV a significant competitive advantage over traditional AAV production methods.

**B-Homoestra-1,3,5(10)-trienes as Modulators of Tubulin Polymerization**

Ernest Hamel *et al.* (NCI).
U.S. Patent No. 6,696,436
Issued 24 Feb 2004
(DHHS Reference No. E–230–1999/0–US–03).
*Licensing Contact:* Jeff Walenta; 301/435–4633; *walentaj@mail.nih.gov*.

This invention relates to the general field of steroid chemistry, particularly to estrone derivatives. Specifically, this invention provides B-ring expanded estra-1,3,5(10)-triene compounds of general formula which modulate the polymerization of tubulin and/or the depolymerization of microtubules. Successful cell division, as a step of cell mitosis, depends on the proper polymerization of tubulin and the proper depolymerization of microtubules. This invention also relates to methods of using the compounds as anti-mitotic, anti-angiogenic and anti-tumor therapeutics for the treatment of cancer or other mammalian diseases characterized by undesirable angiogenesis. Additionally, the invention provides methods of preparing the compounds. The compounds of the invention are also expected to have utility as research tools.

This invention was published in: Verdier-Pinard *et al.*, ''A Steroid Derivative With Paclitaxel-Like Effects on Tubulin Polymerization,'' Mol. Pharmacol. 2000 Mar, 57(3):568–575; Wang *et al.*, ''Synthesis of B-ring Homologated Estradiol Analogues that Modulate Tubulin Polymerization and

Microtubule Stability,'' J. Med. Chem. 2000 Jun 15, 43(12):2419–2429.

**Methods and Compositions for Transforming Dendritic Cells and Activating T Cells**

Patrick Hwu *et al.* (NCI).

U.S. Patent No. 6,734,014

Issued 11 May 2004

(DHHS Reference No. E–040–1996/0–US–07).

*Licensing Contact:* Jeff Walenta; 301/435–4633; *walentaj@mail.nih.gov.*

T cells mediate most forms of cellular immunity. Typically T cells do not respond to free antigenic peptides, but instead T cells interact with a specialized set of cell surface proteins, which are the class I and class II major histocompatibility complexes, or MHC. Specialized antigen-presenting cells, such as macrophage and dendritic cells, present antigenic peptides on the surface cells in conjunction with the MHC molecules, and induce cytotoxic T cells to proliferate. T cells are induced by these antigen-presenting cells to recognize corresponding antigens expressed on MHC antigens on the surface of target cells, and destroy these target cells.

This invention describes a novel method for making transformed dendritic cells with any recombinant nucleic acid, which have been difficult to transduce using existing methods. Recombinant dendritic cells are made by transforming a stem cell and differentiating the stem cell into a dendritic cell. The resulting dendritic cell is an antigen-presenting cell that activates T cells against MHC class I-antigen targets. The present invention provides a valuable tool for the treatment of cancer, and viral and parasitic infections using the recombinant dendritic cells. The invention also provides therapeutic compositions and pharmaceutical compositions.

This research is described in Reeves *et al.*, ''Retroviral Transduction of Human Dendritic Cells with a Tumor-Associated Antigen Gene,'' Cancer Res. 1996 Dec15, 56(24):5672–5677.

Dated: August 18, 2004.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 04–19539 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* NIH Advisory Board for Clinical Research.

*Date:* September 21, 2004.

*Time:* 2 p.m. to 6 p.m.

*Agenda:* For discussion of planning, operational, and clinical research issues.

*Place:* National Institutes of Health, Building 1, 1 Center Drive, Room 151, Bethesda, MD 20892.

*Contact Person:* Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: August 19, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19548 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Fogarty International Center Advisory Board.

*Date:* September 14, 2004.

*Open:* 8:30 a.m. to 12 p.m.

*Agenda:* A Report of the FIC Director on updates and overviews of new FIC initiatives. The main topics of the Board will be ''U.S. Attitudes Toward International Efforts.''

*Place:* National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

*Closed:* 1 p.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

*Contact Person:* Jean L. Flagg-Newton, Special Assistant to the Director, FIC.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/fic/about/advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: August 19, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19547 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the fifth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to 5 p.m. on October 18, 2004 and 8:30 a.m. to 3 p.m. on October 19, 2004 at the Marriott Hotel Bethesda at 5151 Pooks Hill Road, Bethesda, Maryland. The meeting will be open to the public with attendance limited to space available. The meeting will be webcast.

The first half of the first day will be devoted to a session to receive testimony from individuals who have been affected by genetic discrimination in health insurance and employment. The second half of the first day will include presentations related to and discussion of a revised draft report on coverage and reimbursement for genetic technologies and services and the development of recommendations on the issues identified in the report. Discussion of the draft coverage and reimbursement report will continue throughout the first half of the second day. The second day will end with a status report on the National Academy of Sciences' study of genomics and patents and discussions of future plans for Committee action on the issues of pharmacogenomics and large population studies. Time will be provided each day for public comments.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the webcast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm*.

The Committee would welcome hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. In addition, the Committee is specifically seeking written public comment from individuals who have experienced genetic discrimination in health insurance or in employment, who fear genetic discrimination, or who have paid out of pocket for services to keep genetic information out of medical records. Individuals who would like to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGHS Executive Secretary, Ms. Sara Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov*. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892.

Dated: August 19, 2004.

**LaVerne Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19545 Filed 8–25–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Human Specimen Banking in Cancer Trials.

*Date:* October 13, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 20, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19552 Filed 8–25–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Minority Health and Health Disparities.

*Date:* September 14, 2004.

*Open:* 8:30 a.m. to 4:30 p.m.

*Agenda:* The Agenda will include opening remarks, administrative matters, director's report, NCMHD, Advisory Council Subcommittee reports, HHS health disparities update, NIH IC and NCMHD Grantees health disparities reports, and other business of the Council.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* 4:30 p.m. to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Lisa Evans, JD, Senior Advisor for Policy, National Center on Minority Health, and Health Disparities. 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–402–1366, *evansl@ncmhd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: August 20, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19551 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Career Enhancement Award (K18) Applications.

*Date:* September 15, 2004.

*Time:* 5:15 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Nancy L. Di Fronzo, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–0288, *difronzon@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Continuing Education Training Program (T15) Applications.

*Date:* September 16, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Nancy L. Di Fronzo, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–0288, *difronzon@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Idiopathic Pulmonary Fibrosis Clinical Research Network (U10) Applications.

*Date:* September 29–30, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Roy L. White, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7192, MSC 7924, Bethesda, MD 20892, 301–435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 20, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19549 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, SBIR Topics 303 & 305.

*Date:* September 10, 2004.

*Time:* 10 a.m. to 4 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 19, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19540 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 HH–26 Review of R21 Applications.

*Date:* August 27, 2004.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Fishers Bldg., 5635 Fishers Lane, Room 3033, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9034, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 19, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19541 Filed 8–25–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Competing Continuation of SBIR/STTR Phase II Awards.

*Date:* September 13, 2004.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Eugene R. Baizman, PhD, Scientific Review Administrator, DHHS/NIAID/DEA/SRP, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *eb237e@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Competing Continuation of SBIR/STTR Phase II Awards.

*Date:* September 14, 2004.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Eugene R. Baizman, PhD, Scientific Review Administrator, DHHS/NIAID/DEA/SRP, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *eb237e@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 19, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19542 Filed 8–25–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited P01 on Asthma Research.

*Date:* September 13, 2004.

*Time:* 2 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Katherine L. White, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 435–1615, *kw174b@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 19, 2004.

**LaVerne L. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19543 Filed 8–25–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetes and Endocrinology Research Centers.

*Date:* October 6–7, 2004.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 19, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19544 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–14, Review of R01s.

*Date:* September 16, 2004.

*Time:* 4 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., Rm. 4AN32E, Bethesda, MD 20892, 301–451–5096.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–61, Review of R13s.

*Date:* September 21, 2004.

*Time:* 3:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Mary Kelly, Scientific Review Specialist, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Bldg., Rm. 4AN44, Bethesda, MD 20892–6402, (301) 594–4809, *mary_kelly@nih.gov.*

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–10, Review of R25s.

*Date:* September 23, 2004.

*Time:* 10 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–15, Review of R21s.

*Date:* October 21, 2004.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., Rm. 4AN32E, Bethesda, MD 20892, 301–451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: August 19, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19546 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Deafness and Other Communication Disorders Advisory Council.

*Date:* September 10, 2004.

*Open:* 8:30 a.m. to 11:30 a.m.

*Agenda:* Staff reports on divisional, programmatic and special activities.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Closed:* 11:30 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:*National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Craig A. Jordan, PhD, Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8693, *jordanc@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nidcd.nih.gov/about/councils/ndcdac/ndcdac.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 19, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19550 Filed 8–25–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

This meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Library of Medicine, Board of Scientific Counselors, Lister Hill Center.

*Date:* September 23–24, 2004.

*Open:* September 23, 2004, 9 a.m. to 1 p.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

*Place:* National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* September 23, 2004, 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* September 23, 2004, 2 p.m. to 5 p.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

*Place:* National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* September 24, 2004, 9 a.m. to 12 p.m.

*Agenda:* Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

*Place:* National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7N–707, Bethesda, MD 20892, (301) 496–4441.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 19, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19534 Filed 8–25–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

*Date:* September 20, 2004.

*Closed:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38A, Room B1N3OQ, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20892.

*Name of Committee:* Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.

*Date:* September 21, 2004.

*Open:* 7:30 a.m. to 8:45 a.m.

*Agenda:* Outreach Activities for the National Library of Medicine.

*Place:* National Library of Medicine, Building 38, 2nd Floor Mezzanine, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* September 21–22, 2004.

*Open:* September 21, 2004, 9 a.m. to 4:30 p.m.

*Agenda:* Administrative Reports and Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor Mezzanine, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* September 21, 2004, 4:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor Mezzanine, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* September 22, 2004, 9 a.m. to 12 p.m.

*Agenda:* Administrative Reports and Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor Mezzanine, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance

into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov-od-bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 19, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–19535 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: ''BL22, an Immunotoxin That Shows Efficacy in Clinical Trials in Treating Patients With Chemotherapy-Resistant Hairy Cell Leukemia, and HA22, a Newly Engineered Immunotoxin, Which Shows Improved Cytotoxic Activity Over BL22''

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the Food and Drug Administration and the Department of Health and Human Services is contemplating the grant of an exclusive license to practice the inventions embodied in: E–146–1999/0, entitled Reduction of Nonspecific Animal Toxicity of Immunotoxin by Mutating Framework Regions of Fv To Lower Isoelectric Point, which includes: Pending U.S. Patent Application 10/416,129, based on PCT application PCT/US01/43602; E–216–2000/2, entitled Pegylation of Linkers Improves Antitumor Activity and Reduces Toxicity of Immunoconjugates, which includes: Pending U.S. Patent Application 10/297,337, based on PCT application PCT/US01/18503; E–129–2001/0, entitled Mutated Anti-CD22 Antibodies With Increased Affinity to CD22 Expressing Leukemia Cells, which includes: PCT application PCT/US02/30316; and E–046–2004/0, entitled Mutated Anti-CD22 Antibodies and Immunoconjugates, which includes: U.S. Patent Application number 60/525,371; to Genencor International, Inc., which is located in Palo Alto, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to the to use of the BL22 and HA22 immunoconjugates for the treatment of hematologic malignancies.

**DATES:** Only written comments and/or license applications which are received by the National Institutes of Health on or before October 25, 2004 will be considered.

**ADDRESSES:** Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Brenda J. Hefti, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; and E-mail: *heftib@od.nih.gov*.

**SUPPLEMENTARY INFORMATION:** This technology is a family of two immunoconjugates, each consisting of an anti-CD22 antibody coupled to a killing moiety, specifically pseudomonas exotoxin (PE38). The immunotoxins are both targeted towards CD22, and might be useful as therapeutics for the treatment of leukemias, lymphomas, and autoimmune diseases. The BL22 immunoconjugate has shown success in early clinical trials, and it is believed by the investigators that the HA22 immunoconjugate will be superior to the BL22 because of its increased affinity for CD22.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 18, 2004.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 04–19537 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Development of Antibody-Based Therapeutics That Specifically Bind the Platelet-Derived Growth Factor Receptor Alpha (CD140A/PDGFR2/PDGFRA)

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in any or all of (a) U.S. patents 5,468,468 (11/21/1995); 5,833,986 (11/10/1998); 5,863,739 (01/26/1999); 5,965,359 (10/12/1999); 6,228,600 (05/08/2001) and 6,660,488 (12/09/2003), (b) U.S. patent applications 07/308,282 (02/09/1989, now abandoned), 07/915,884 (7/20/1992, now abandoned), 08/439,095 (05/11/1995, pending), 10/700,249 (11/03/2003, pending) and (c) foreign applications corresponding to PCT Patent Application PCT/US90/00617 entitled ''Type Alpha Platelet Derived Growth Factor Receptor Gene'', published as WO 90/10013 (9/7/1990) to ImClone Systems Incorporated of New York, New York.

The prospective exclusive license may be limited to the development of compositions and methods of utilizing antibody-based products that specifically bind the alpha platelet-derived growth factor receptor (α-PDGFR/CD140a/PDGFRA/PDGF2/PDGFR-α), for the treatment of cancer.

**DATES:** Only written comments and/or applications for a license which are received by NIH on or before October 25, 2004 will be considered.

**ADDRESSES:** Requests for a copy of these patent applications, inquiries, comment and other materials relating to the contemplated license should be directed to Susan S. Rucker, Esq., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard,

Suite 325, Rockville, Maryland 20852–3804; telephone: 301/435–4478; fax: 301/402–0220. A signed Confidentiality Agreement (CDA) will be required to receive copies of the patent applications.

**SUPPLEMENTARY INFORMATION:** The patents and patent applications describe and claim compositions and methods that incorporate or are derived from the molecule known as alpha platelet derived growth factor receptor (α-PDGFR). α-PDGFR is also known as CD140a/PDGFRA/PDGF2/PDGFR-α. PDGFR-α is a type III receptor tyrosine kinase characterized by an extracellular domain having five IgG-like domains, a transmembrane domain and a catalytic intracellular domain. Research suggests it has autocrine and paracrine signaling capability. PDGFRA expression and signaling have been linked to tumorigenesis and its activity, although not always coupled with over-expression, has been implicated in a number of cancers including lung cancer, ovarian cancer, prostate cancer, glioblastoma and melanoma.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license (*i.e.*, a completed ''Application for License to Public Health Service Inventions'') in the indicated exclusive field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and/or objections filed in response to the notices of January 27, 1993 [58 FR 6287] and February 15, 1994 [59 FR 7259] are not considered responsive to this notice and will not be treated as objections thereto. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act 5 U.S.C. 552.

Dated: August 18, 2004.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 04–19538 Filed 8–25–04; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Co-Exclusive License: Zenapax (Humanized Antibody Against the IL–2 Receptor Alpha Chain) as a Novel Treatment for Multiple Sclerosis

**AGENCY:** National Institutes of Health, Public Health Services, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a co-exclusive license to practice the inventions embodied in U.S. Provisional Patent Application No. 60/393,021, filed June 28, 2002, ''Method of Treating Autoimmune Diseases with Interferon-Beta and IL–2R Antagonist'' (DHHS ref. no. E–143–2002/0–US–01), International Patent Application No. PCT/US2002/038290, filed November 27, 2002, International Publication No. WO 2004/002500 A1, published January 8, 2004, ''Method of Treating Autoimmune Diseases with Interferon-Beta and IL–2R Antagonist'' (DHHS ref. no. E–143–2002/0–PCT–02), International Application No. PCT/US2003/020428, filed June 27, 2003, International Publication No. WO 2004/002421 A2, published January 8, 2004, ''Method For the Treatment of Multiple Sclerosis'' (DHHS ref. no. E–143–2002/0–PCT–04), and U.S. Patent Application No. 10/607,598, filed June 27, 2003, Publication No. US 2004/0109859 A1, published June 10, 2004, ''Method For the Treatment of Multiple Sclerosis'' (DHHS ref. no. E–143–2002/0–US–03), and all corresponding foreign patent applications to Serono S.A., of Geneva, Switzerland. The patent rights in these inventions have been assigned to the United States of America. This notice is a modification of a notice published in the **Federal Register** in 68 FR 70826–70827, Dec. 19, 2003.

The prospective co-exclusive license territory will be worldwide. The field of use may be limited to the treatment of multiple sclerosis using monoclonal antibodies against the interleukin-2 receptor. Two co-exclusive licenses may be granted.

**DATES:** Only license applications which are received by the National Institutes of Health on or before October 25, 2004 will be considered.

**ADDRESSES:** Requests for information, inquiries, comments, and other materials relating to the contemplated co-exclusive license should be directed to: Thomas P. Clouse, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–435–4076; Facsimile: 301–402–0220; E-mail: *clouset@mail.nih.gov.* Copies of the international publications can be obtained from *http://ep.espacenet.com.* Copies of the U.S. publication can be obtained from *http://www.uspto.gov.*

**SUPPLEMENTARY INFORMATION:** The above-identified patent applications relate to the discovery that administration of an interleukin-2 receptor antagonist to a patient is effective in the treatment of autoimmune disorders. Examples in the patent applications show that a humanized antibody to the interleukin-2 receptor alpha chain (IL–2Rα) (humanized anti-Tac antibody), daclizumab, is effective in treating MS. In particular, it has been discovered that patients who failed to respond to therapy with interferon-beta showed dramatic improvement when treated with daclizumab, with patients showing both a reduction in the total number of lesions and cessation of appearance of new lesions during the treatment period. Pending claims in the above-referenced patent applications are directed to methods of treating a patient with multiple sclerosis (MS) by administering a therapeutically effective amount of an IL–2 receptor antagonist. IL–2 receptor antagonists can be antibodies, peptides, chemical compounds, and small molecules.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 18, 2004.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 04–19536 Filed 8–25–04; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Border and Transportation Security; Notice to Aliens Included in the United States Visitor and Immigrant Status Indicator Technology System (US–VISIT)

**AGENCY:** Border and Transportation Security Directorate, DHS.

**ACTION:** Notice; technical correction.

**SUMMARY:** On August 20, 2004, the Department of Homeland Security (DHS) published a Notice in the **Federal Register** at 69 FR 51695 adding certain ports to, and deleting certain ports from, inclusion in the US–VISIT program. In this Notice, the Jacksonville sea port in Jacksonville, Florida was inadvertently deleted. This technical correction amends the list of ports that was published on August 20, 2004 to include the Jacksonville sea port.

**EFFECTIVE DATE:** This Notice is effective August 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** Michael Hardin, Program Analyst, US–VISIT, Border and Transportation Security, Department of Homeland Security, 425 I Street, NW., Washington, DC 20536, telephone (202) 298–5200.

**SUPPLEMENTARY INFORMATION:** On January 5, 2004, DHS published a Notice in the **Federal Register** at 69 FR 482 designating 115 airports and 14 sea ports for inclusion in the US–VISIT program. One of these 14 sea ports was the Jacksonville sea port in Jacksonville, Florida. On August 20, 2004, DHS published a Notice in the **Federal Register** at 69 FR 51695 adding certain ports to, and deleting certain ports from, inclusion in the US–VISIT program. In this Notice, the Jacksonville sea port in Jacksonville, Florida was inadvertently deleted.

#### What Does This Notice Do?

This Notice amends the Notice published on August 20, 2004 to include the Jacksonville sea port on the list of ports of entry designated to collect biometric data from certain aliens upon arrival in the United States. No other action is taken in this Notice.

#### Notice of Requirements for Biometric Collection From Aliens

DHS hereby designates the following ports of entry for inclusion in US–VISIT for the collection of information at the time of alien arrival pursuant to 8 CFR 235.1(d)(1):

*Sea ports:* Jacksonville, Florida.

Dated: August 23, 2004.

**Tom Ridge,**

*Secretary of Homeland Security.*

[FR Doc. 04–19553 Filed 8–25–04; 8:45 am]

BILLING CODE 4410–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection and Related Functions (COAC)

**AGENCY:** Bureau of Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces the date, time, and location for the final meeting of the eighth term of the Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection and Related Functions (COAC), and the expected agenda for its consideration.

**DATES:** The next meeting of the COAC will be held on Friday, September 10, 2004, 9 a.m. to 1 p.m.

**ADDRESSES:** The meeting of the Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection and Related Functions (COAC) will be held 9 a.m.–1 p.m. in the Adam's Mark Fountain Room, Adam's Mark Hotel, 120 Church Street, Buffalo, NY 14202; hotel ph: (716) 845–5100/fax: (716) 845–5377.

**FOR FURTHER INFORMATION CONTACT:** Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 571–227–3977; facsimile 571–227–1937.

**SUPPLEMENTARY INFORMATION:** This meeting is open to the public; however, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice to Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 571–227–3977; facsimile 571–227–1937, no later than 2 p.m. e.s.t. on Tuesday, September 7, 2004.

*Information on Services for Individuals with Disabilities:* For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 571–227–3977; facsimile 571–227–1937, as soon as possible.

*Draft Agenda:* The COAC is expected to pursue the following agenda, which may be modified prior to the meeting:

1. MTSA Subcommittee
2. Security Subcommittee
   a. Advance Cargo Information
   b. WCO Security
   c. C–TPAT Process Review
3. Automation Issues
   a. ACE funding and development schedule
   b. ACS downtime
4. International Trade Data System (ITDS)
5. Agriculture Subcommittee
6. Creation of Infrastructure Subcommittee
7. Bioterrorism Act
8. Focused Assessment Program

Dated: August 23, 2004.

**C. Stewart Verdery, Jr.,**

*Assistant Secretary for Border and Transportation Security Policy and Planning.*

[FR Doc. 04–19505 Filed 8–25–04; 8:45 am]

BILLING CODE 4410–10–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4907–N–27]**

### Notice of Proposed Information Collection: Comment Request; Application for Approval—FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer Branch Office Notification—Title I/Title II

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* October 25, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Phillip A. Murray, Director, Office of Lender Activities, Assistant Secretary for Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1515 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection ins necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Application for Approval—FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer Branch Office Notification—Title I/Title II.

*OMB Control Number, if applicable:* 2502–0005.

*Description of the need for the information and proposed use:* The Federal Housing Administration (FHA) and the Government National Mortgage Association (Ginnie Mae) of the Department of Housing and Urban Development approve entities to participate as Title I lenders, Title II mortgagees, and the Ginnie Mae mortgage-backed securities issuers. Specific information must be obtained and reviewed to determine if an entity meets the criteria to obtain the requested approval. In addition, this submission covers subsequent information required by FHA in order for entities to maintain their approval, update information previously submitted on the entity, report any non-compliance, and voluntarily terminate their FHA approval.

*Agency form numbers, if applicable:* HUD–11701 and HUD–92001–B.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

| Item No. | Information collection | Number of expected respondents | Total annual responses | Hours per response | Total annual hours |
|---|---|---|---|---|---|
| 1 | HUD–11701 Application for FHA Approval, by paper (including attachments). | 2,000 | 2,000 | 2.00 | 4,000 |
| 1 | Annual Verification Report by all approved lenders (by paper). | 11,500 | 11,500 | .10 | 1,150 |
| 1 | HUD–11701 Application for Ginnie Mae Approval, by paper (including attachments). | | 50 | 1.25 | 63 |
| 2 | HUD–92100–B. Application for New Branch by loan correspondents, by paper (including attachments). | | 1,500 | .50 | 750 |
| 3 | Electronic Registration of New Branch by Mortgagees via FHA Connection. | | 2,500 | .10 | 250 |
| 4 | Electronic Termination of Existing Branch by all lenders via FHA Connection. | | 3,000 | .05 | 150 |
| 5 | Cover Sheet for Application Fee or Conversion of Mortgagee Type for Title I Approval (by paper). | | 200 | .05 | 10 |
| 5 | Cover Sheet for Application Fee or Conversion of Mortgagee Type for Title II Approval (by paper). | | 1,800 | .05 | 90 |
| 5 | Application Fee for Branch registration electronically or request for approval in paper using HUD 92001–B. | | 4,000 | .05 | 200 |
| 7 | Non-Address Business Change Notification (by paper) | | 600 | .50 | 300 |
| 8 | Address Updates via FHA Connection | | 3,000 | .25 | 750 |
| 9 | Personnel Change Notification of new owners, officers, directors or partners (by paper). | | 1,000 | .50 | 500 |
| 10 | Non-Compliance Notification pursuant to Lender Quality Control Plans (by paper). | | 600 | 1.00 | 600 |
| 11 | Voluntary Termination by a Lender (by letter) | | 500 | .25 | 125 |
| Total | | 13,500 | 32,250 | | 8,938 |

*Status of the proposed information collection:* Revision of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 18, 2004.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.*

[FR Doc. 04–19492 Filed 8–25–04; 8:45 am]

**BILLING CODE 4210–27–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4917–N–02]**

## Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning July 1, 2004, is 5⅜ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2004, is 5½ percent. However, as a result of a recent amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years as found in Federal Reserve Statistical Release H–15.

**FOR FURTHER INFORMATION CONTACT:** L. Richard Keyser, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2232, Washington, DC 20410–8000; telephone (202) 755–7500 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 2004, is 5½ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 5½ percent for the 6-month period beginning July 1, 2004. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the last 6 months of 2004.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

| Effective interest rate | On or after | Prior to |
|---|---|---|
| 9½ | Jan. 1, 1980 | July 1, 1980. |
| 9⅞ | July 1, 1980 | Jan. 1, 1981. |
| 11¾ | Jan. 1, 1981 | July 1, 1981. |
| 12⅞ | July 1, 1981 | Jan. 1, 1982. |
| 12¾ | Jan. 1, 1982 | Jan. 1, 1983. |
| 10¼ | Jan. 1, 1983 | July 1, 1983. |
| 10⅜ | July 1, 1983 | Jan. 1, 1984. |
| 11½ | Jan. 1, 1984 | July 1, 1984. |
| 13⅜ | July 1, 1984 | Jan. 1, 1985. |
| 11⅝ | Jan. 1, 1985 | July 1, 1985. |
| 11⅛ | July 1, 1985 | Jan. 1, 1986. |
| 10¼ | Jan. 1, 1986 | July 1, 1986. |
| 8¼ | July 1, 1986 | Jan. 1. 1987. |
| 8 | Jan. 1, 1987 | July 1, 1987. |
| 9 | July 1, 1987 | Jan. 1, 1988. |
| 9⅛ | Jan. 1, 1988 | July 1, 1988. |
| 9⅜ | July 1, 1988 | Jan. 1, 1989. |
| 9¼ | Jan. 1, 1989 | July 1, 1989. |
| 9 | July 1, 1989 | Jan. 1, 1990. |
| 8⅛ | Jan. 1, 1990 | July 1, 1990. |
| 9 | July 1, 1990 | Jan. 1, 1991. |
| 8¾ | Jan. 1, 1991 | July 1, 1991. |
| 8½ | July 1, 1991 | Jan. 1, 1992. |
| 8 | Jan. 1, 1992 | July 1, 1992. |
| 8 | July 1, 1992 | Jan. 1, 1993. |
| 7¾ | Jan. 1, 1993 | July 1, 1993. |
| 7 | July 1, 1993 | Jan. 1, 1994. |
| 6⅝ | Jan. 1, 1994 | July 1, 1994. |
| 7¾ | July 1, 1994 | Jan. 1, 1995. |
| 8⅜ | Jan. 1, 1995 | July 1, 1995. |
| 7¼ | July 1, 1995 | Jan. 1, 1996. |
| 6½ | Jan. 1, 1996 | July 1, 1996. |
| 7¼ | July 1, 1996 | Jan. 1, 1997. |
| 6¾ | Jan. 1, 1997 | July 1, 1997. |
| 7⅛ | July 1, 1997 | Jan. 1, 1998. |
| 6⅜ | Jan. 1, 1998 | July 1, 1998. |
| 6⅛ | July 1, 1998 | Jan. 1, 1999. |
| 5½ | Jan. 1, 1999 | July 1, 1999. |
| 6⅛ | July 1, 1999 | Jan. 1, 2000. |
| 6½ | Jan. 1, 2000 | July 1, 2000. |
| 6½ | July 1, 2000 | Jan. 1, 2001. |
| 6 | Jan. 1, 2001 | July 1, 2001. |
| 5⅞ | July 1, 2001 | Jan. 1, 2002. |
| 5¼ | Jan. 1, 2002 | July 1, 2002. |
| 5¾ | July 1, 2002 | Jan. 1, 2003. |
| 5 | Jan. 1, 2003 | July 1, 2003. |
| 4½ | July 1, 2003 | Jan. 1, 2004. |
| 5⅛ | Jan. 1, 2004 | July 1, 2004. |
| 5½ | July 1, 2004 | Jan. 1, 2005. |

Section 215 of HUD's 2004 Appropriations Act amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, effective immediately, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration is in the process of making conforming amendments to applicable regulations to fully implement this recent change to section 224 of the Act.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning July 1, 2004, is 5⅜ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 2005.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: August 18, 2004.

**Sean Cassidy,**

*General Deputy Assistant Secretary for Housing.*

[FR Doc. 04–19491 Filed 8–25–04; 8:45 am]

**BILLING CODE 4210–27–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Environmental Review of Proposed Incidental Take Permit and Habitat Conservation Plan for the Kauai Island Utility Cooperative, Hawaii

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Correction.

**SUMMARY:** The U.S. Fish and Wildlife Service is publishing this notice to correct a previous notice (document 04–16095) published on Thursday, July 15, 2004. On page 42447, under the heading **DATES**, the August 16, 2004, deadline for receipt of written comments is incorrect. The correct deadline is October 16, 2004. In addition, on page 42447 under the heading **SUMMARY** and on page 42448 under the heading **SUPPLEMENTARY INFORMATION**, Environmental Review, the previous notice incorrectly referred to preparation of a ''joint Federal/State environmental document.'' This reference is corrected to delete the words ''joint'' and ''/State''. The environmental document is a Federal document prepared by the U.S. Fish and Wildlife Service.

Dated: August 4, 2004.

**Don Weathers,**

*Acting Deputy Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 04–19509 Filed 8–25–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Bureau of Reclamation

**[NM–030–5101–ER–GO46]**

### Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Alamogordo Regional Water Supply Project, New Mexico

**AGENCIES:** Bureau of Land Management and Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare an EIS and notice of public scoping meetings.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM) and the Bureau of Reclamation (Reclamation) intend to prepare an EIS. The EIS will be analyzing the impacts associated with a proposal to develop a well field, construct a pipeline, and construct and operate a desalination water treatment facility in the Tularosa Basin, New Mexico (the Project). In addition, the EIS will present a discussion of significant environmental impacts and a comparison of reasonable alternatives. The BLM and Reclamation will serve as joint lead agencies and direct the preparation of the EIS by a third-party contractor funded by the City of Alamogordo, New Mexico.

**DATES:** Public scoping meetings will be held at the following times and locations:

October 5, 2004—6 to 8 p.m., Willie Estrada Civic Center, 800 East First Street, Alamogordo, New Mexico 88310.

October 6, 2004—6 to 8 p.m., Senior Center, 1055 Bookout Road, Tularosa, New Mexico 88352.

**ADDRESSES:** Public scoping meetings will be held in Alamogordo and Tularosa, New Mexico, in order to receive input from interested agencies, organizations, and individuals, and to present further information regarding the Project.

Scoping is an early and public process for determining the issues to be addressed, for identifying any significant issues and suggesting alternatives related to the proposed Federal action. The scoping period will be open from August 26, 2004 to October 25, 2004. When the draft EIS is complete, its availability will be announced in the **Federal Register**, in the local news media, and through direct contact with interested parties. Written comments regarding the scope and content of the EIS, as well as requests for information regarding the Project, should be forwarded to SWCA Environmental Consultants, Attention: Alamogordo Regional Water Supply Project, 7001 Prospect Place NE., Suite 100, Albuquerque, New Mexico 87110, or by electronic mail to *almwater@swca.com.*

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the draft EIS, should contact SWCA Environmental Consultants at the address provided above. Comments will be solicited on the draft document for a minimum of 45 days after the Environmental Protection Agency publishes a Notice of Availability of the Draft EIS in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Philip Rhinehart, Bureau of Land Management, at (505) 525–4426 or Robert Maxwell, Bureau of Reclamation, at (505) 462–3597.

**SUPPLEMENTARY INFORMATION:** The purpose of this EIS is to evaluate the potential for significant environmental and socioeconomic impacts as a result of the Project, provide a decision-making tool that will compare and analyze project alternatives, serve as a public information document, and track and document the process used to reach decisions. The need for the Project is to secure a sustainable fresh water resource for use by the City of Alamogordo and the surrounding region, as the current water supply is not sufficient to meet both current and future water demands. The region that would be potentially affected by the Project includes an area within the boundary of the Tularosa Ground Water Basin, as declared by the State Engineer of New Mexico (the Basin).

The Project would provide a water supply to serve the region's needs by pumping ground water from the Hueco-Bolson aquifer, a large portion of which

underlies the Tularosa Basin. The water within the aquifer and within the Basin is saline and would require treatment to meet drinking water standards. Saline water is defined as water that has a total dissolved solids (salts) concentration that is above drinking water standards. Estimates indicate that the volume of saline water stored within the Basin is enough to sustain a regional water supply to meet the region's present and future demands, if treated to meet drinking water standards. The Project is proposed to help serve the water supply needs of the Alamogordo region by continuing to ensure water conservation within the City, and by treating saline water from the Basin to meet drinking water standards.

Parameters to be evaluated in the EIS include (1) the location of project facilities, (2) desalination methodologies, (3) the effects of pumping water from the Hueco-Bolson aquifer, (4) the techniques used for concentrate disposal or beneficial re-use of concentrate that is a product of the desalination process, and (5) the consequences of not developing the Project.

**Public Disclosure**

Scoping comments, including names and addresses of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name and address from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Bureau of Reclamation.

Dated: July 2, 2004.

**Rick L. Gold,**

*Regional Director—UC Region, Bureau of Land Management.*

Dated: July 6, 2004.

**Edwin L. Roberson,**

*Field Manager, Las Cruces.*

[FR Doc. 04–19220 Filed 8–25–04; 8:45 am]

**BILLING CODE 4310–VC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–03–840–1610–241A]**

### Canyons of the Ancients National Monument Advisory Committee Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Canyons of the Ancients National Monument (Monument) Advisory Committee (Committee), will meet as directed below.

**DATES:** A meeting will be held on November 9, 2004 at the Anasazi Heritage Center in Dolores, Colorado at 9 a.m. The public comment period for the meeting will begin at approximately 2:30 p.m. and the meeting will adjourn at approximately 3:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** LouAnn Jacobson, Monument Manager or Stephen Kandell, Monument Planner, Anasazi Heritage Center, 27501 Hwy 184, Dolores, Colorado 81323; Telephone (970) 882–5600.

**SUPPLEMENTARY INFORMATION:** The eleven member committee provides counsel and advice to the Secretary of the Interior, through the BLM, concerning development and implementation of a management plan developed in accordance with FLMPA, for public lands within the Monument. At the meeting, topics we plan to discuss include planning issues and management concerns in the field, planning alternatives, partnerships, science and other issues as appropriate.

The meeting will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meeting or submit written statements. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of the Committee meeting will be maintained at the Anasazi Heritage Center in Dolores, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days of the meeting. In addition, minutes and other information concerning the Committee can be obtained from the Monument planning Web site at: *http://www.blm.gov/rmp/canm* which will be updated following each Committee meeting.

Dated: August 16, 2004.

**LouAnn Jacobson,**

*Monument Manager, Canyons of the Ancients National Monument.*

[FR Doc. 04–19533 Filed 8–25–04; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–030 –04–1610—PH–241A]**

### Notice of Resource Advisory Committee Meeting

**AGENCY:** Grand Staircase-Escalante National Monument (GSENM), Bureau of Land Management (BLM), Department of the Interior.

**ACTION:** Notice of Grand Staircase-Escalante National Monument Advisory Committee (GSENM) meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) will meet as indicated below.

**DATES:** Two days of meetings are scheduled for September 28–29, 2004. The meeting on September 28 will be held at the GSENM Cannonville Visitor Center, 10 Center Street, Cannonville, Utah. It will begin at 9:30 a.m. and conclude at 6:30 p.m. On September 29 the meeting will be held at the Escalante Interagency Office, 755 W. Main Street, Escalante, Utah. It will begin at 8 a.m. and conclude at 5 p.m.

For further information: Contact Allysia Angus, Landscape Architect / Land Use Planner, GSENM Headquarters Office, 190 East Center, Kanab, Utah 84741; phone (435) 644–4364, or e-mail *allysia_angus@blm.gov.*

**SUPPLEMENTARY INFORMATION:** The Grand Staircase-Escalante National Monument (GSENM) Advisory Committee will meet on September 28 and 29, 2004, in Cannonville and Escalante, Utah, respectively. The meeting on September 28 will be held at the GSENM Cannonville Visitor Center, 10 Center Street, Cannonville, Utah. It will begin at 9:30 a.m., local time, and conclude at 6:30 p.m. On September 29 the meeting will be held at the Escalante Interagency Office, 755 W. Main Street, Escalante, Utah. It will begin at 8 a.m. and conclude at 5 p.m.

The Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) was appointed by the Secretary of Interior on September 26, 2003, pursuant to the Monument Management Plan, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA). As specified in the Monument Management Plan, the GSENMAC will have several primary tasks: (1) Review evaluation reports produced by the Management Science Team and make recommendations on protocols and projects to meet overall objectives; (2) Review appropriate research proposals and make recommendations on project necessity and validity; (3) Make recommendations regarding allocation of research funds through review of research and project proposals as well as needs identified through the evaluation process above; (4) Could be consulted on issues such as protocols for specific projects.

Topics to be presented and discussed by the GSENMAC include the Rangeland Health Environmental Impact Statement (EIS), the Science Program, current and potential restoration projects, the Fee Demonstration Program, and Geographic Information Systems (GIS) utilization.

Members of the public are welcome to address the council from 5:30 p.m. to 6:30 p.m., local time on September 28, 2004, in Cannonville, Utah, at the GSENM Visitor Center. Depending on the number of persons wishing to speak, a time limit could be established. Interested persons may make oral statements to the GSENMAC during this time or written statements may be submitted for the GSENMAC's consideration. Written statements can be sent to: Grand Staircase-Escalante National Monument, Attn.: Allysia Angus, 190 E. Center Street, Kanab, UT 84741. Information to be distributed to the GSENMAC is requested 10 days prior to the start of the GSENMAC meeting.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: August 20, 2004.

**Dave Hunsaker,**

*Grand Staircase-Escalante National Monument Manager.*

[FR Doc. 04–19510 Filed 8–25–04; 8:45 am]

BILLING CODE 4310–DQ–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO150–1210–PC–241A]**

### Notice of Public Meeting, Southwest Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior (DOI), Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The Southwest Colorado RAC meeting will begin at 9 a.m. and adjourn at 4 p.m. on October 1, 2004.

**ADDRESSES:** The Southwest Colorado RAC meeting will be held at the Norwood Community Center, 1670 Naturita St., Norwood, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Barbara Sharrow, Field Manager, BLM Uncompahgre Field Office, 2505 South Townsend Ave., Montrose, CO, telephone (970) 240–5300; or Melodie Lloyd, Public Affairs Specialist, BLM Western Slope Center, 2815 H Rd., Grand Junction, CO, telephone (970) 244–3097.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public lands managed by the BLM in southwestern Colorado. All meetings are open to the public.

*The purpose of the meeting is to:*

Introduce new RAC members;
Discuss old RAC business (San Juan Gold Land Exchange);
HD Mountain EIS subgroup report;
West Slope Center status report;
Review OHV designations and regulations;
Review Recreation Guidelines recommended by RACs in 2000;
Form Dominguez-Escalante Community Stewardship Plan subcommittee;
Set fiscal year 2005 meetings.

There will be an opportunity for the public to address the RAC at 9:45 a.m. and 2:45 p.m. Written comments may be submitted for the RAC's consideration. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: August 20, 2004.

**Barbara Sharrow,**

*Lead Designated Federal Officer and Uncompahgre Field Manager.*

[FR Doc. 04–19508 Filed 8–25–04; 8:45 am]

BILLING CODE 4310–AG–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 31, 2004. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 10, 2004.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**CALIFORNIA**

**San Francisco County**

Woman's Athletic Club of San Francisco, 640 Sutter St., San Francisco, 04000955

**DISTRICT OF COLUMBIA**

**District of Columbia**

Oriental Building Association No. 6 Building, 600 F St. NW., Washington, 04000956

**GEORGIA**

**Lowndes County**

Sunset Hill Cemetery, 110 N. Oak St., Valdosta, 04000957

**MASSACHUSETTS**

**Middlesex County**

Wilson Cemetery, Wilson St., Marlborough, 04000958

**Suffolk County**

Fort Point Channel Historic District, Necco Court, Thomson Place, A, Binford, Congress, Farmsworth, Melcher, Midway, Sleeper, Stillings, Summer Sts., Boston, 04000959

**MISSISSIPPI**

**Monroe County**

Coopwood, Capt. Thomas, House, (Aberdeen MRA) 205 Thayer Ave., Aberdeen, 04000967

South Central Aberdeen Historic District (Boundary Increase), (Aberdeen MRA) Roughly bounded by Madison, Meridian, High, and Long Sts., Aberdeen, 04000961

**Warren County**

Uptown Vicksburg Historic District (Boundary Increase), (Vicksburg MPS) Mostly on Washington St. bet. Grove St. and Veto St., Vicksburg, 04000962

**MISSOURI**

**St. Charles County**

McCormick, Isaac, House, 705 MO F, Defiance, 04000960

**NEW HAMPSHIRE**

**Hillsborough County**

Valley Cemetery, Pine and Auburn Sts., Manchester, 04000964

**Rockingham County**

Stevens Memorial Hall, Jct. NH 121 and NH 102, Chester, 04000963

**NORTH CAROLINA**

**Northampton County**

Piland, J.E., House, 148 Mt. Carmel Rd., Margarettsville, 04000966

**Wilkes County**

Southern Railway Depot, Jct. of Ninth St. and CBD Loop, NorthWilkesboro, 04000965

[FR Doc. 04–19493 Filed 8–25–04; 8:45 am]

**BILLING CODE 4312–51–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 7, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 10, 2004.

**Patrick W. Andrus,**

*Acting Keeper of the National Register of Historic Places.*

**ALASKA**

**Matanuska-Susitna Borough-Census Area**

Tryck, Blanche and Oscar, House, North Knik St., bet. the Parks Hwy/Alaska RR and E. Herning Ave., Wasilla, 04000968

**FLORIDA**

**Bay County**

Latimer Cabin, NE Powell Lake, Panama City Beach, 04000972

**Broward County**

Sample—McDougald House, 450 NE 10th St., Pompano Beach, 04000970

**Lake County**

Harper House, 17408 E. Porter Ave., Montverde, 04000969

**Martin County**

Stuart Welcome Arch, Bet. 2369 and 2390 NE Dixie Hwy, Jensen Beach, 04000971

**ILLINOIS**

**Cook County**

Montgomery, John Rogerson, House, 15 Old Green Bay Rd., Glencoe, 04000974

Wrightwood Bungalow Historic District, (Chicago Bungalows MPS) 4600 and 4700 Blks of W. Wrightwood Ave., Chicago, 04000975

**Sangamon County**

Taylor Apartments, (Multiple Family Dwellings in Springfield, Illinois MPS) 117 S. Grand Ave. W, Springfield, 04000976

**St. Clair County**

Koerner, Gustave, House, 200 Abend St., Belleville, 04000983

**IOWA**

**Clayton County**

Front Street Historic District (Boundary Increase), (Guttenberg, Iowa MPS) Selected properties on South First, Prince, Goethe, Herder and Schiller Sts., Guttenberg, 04001009

**KANSAS**

**Sedgwick County**

Bowers House, 1004 North Market, Wichita, 04000973

**LOUISIANA**

**Vernon Parish**

Lyons, Benson H., House, 203 S. 1st St., Leesville, 04000977

**MONTANA**

**Fergus County**

Lewistown Satellite Airfield Historic District (Boundary Increase), MT 87, Lewistown, 04000979

**Rosebud County**

Bonnell, Oliver and Lucy, Gothic Arch Roofed Barn, 247 Shields River Road E, Clyde Park, 04000978

**NEVADA**

**Washoe County**

Burke—Berryman House, 418 Cheney St., Reno, 04000984

**NEW JERSEY**

**Camden County**

USS New Jersey (BB–62), 62 Battleship Place, Camden City, 04000980

**NEW MEXICO**

**Dona Ana County**

Branigan, Thomas, Memorial Library, 106 W. Hadley St., Las Cruces, 04000981

**NEW YORK**

**Albany County**

Myers, Stephen and Harriet, House, 194 Livingston Ave., Albany, 04000999

**Bronx County**

Jackson Avenue Subway Station (IRT), (New York City Subway System MPS) Jct. of E. 152nd St. and Jackson and Westchester Aves., Bronx, 04001025

Prospect Avenue Subway Station (IRT), (New York City Subway System MPS) Jct. of Westchester and Longwood Aves. and Prospect St., Bronx, 04001026

Simpson Street Subway Station and Substation #18 (IRT), (New York City Subway System MPS) Jct. of Westchester Ave., bet. Simpson St. and Southern Blvd., Bronx, 04001027

**Cattaraugus County**

East Otto Union School, 9014 East Otto—Springville Rd., East Otto, 04000993

**Delaware County**

Thomson Family Farm, Thomson Hollow Rd., New Kingston, 04001000

**Kings County**

Atlantic Avenue Subway Station (IRT and BMT), (New York City Subway System MPS) Jct. of Flatbush Ave. at Atlantic and 4th Aves., Brooklyn, 04001023

Beverley Road Subway Station (BRT pre-Dual System), (New York City Subway System MPS) Beverley Rd. at Marlborough Rd., Brooklyn, 04001024

Borough Hall Subway Station (IRT), (New York City Subway System MPS) Jct. of Joralemon, Court and Adams Sts., Brooklyn, 04001022

**New York County**

110th Street—Cathedral Parkway Subway Station (IRT), (New York City Subway System MPS) Jct. of Broadway, W. 110th St. and Cathedral Pkwy., New York, 04001019

116th Street—Columbia University Subway Station (IRT), (New York City Subway System MPS) Jct. of Broadway and West 116sth St., New York, 04001020

33rd Street Subway Station (IRT), (New York City Subway System MPS) 33rd St. and Park Ave., New York, 04001014

59th Street—Columbus Circle Subway Station (IRT), (New York City Subway System MPS) Jct. of Broadway and Central Park South, New York, 04001015
72nd Street Subway Station (IRT), (New York City Subway System MPS) Jct. of Broadway and W. 72nd St., New York, 04001017
79th Street Subway Station (IRT), (New York City Subway System MPS) Jxt. of W. 79th St. and Broadway, New York, 04001018
Astor Place Subway Station (IRT), (New York City Subway System MPS) Jct. of Bowery, Astor Place and Lafayette St., New York, 04001013
Bleecker Street Subway Station (IRT), (New York City Subway System MPS) Jct. of Bleecker and Lafayette Sts., New York, 04001012
City Hall Subway Station (IRT), (New York City Subway System MPS) Park Row and City Hall Park, New York, 04001010
Dyckman Street Subway Station (IRT), (New York City Subway System MPS) Bet. Hillside and St. Nicholas Aves., Jct. of Dyckman St. and Nagle Ave., New York, 04001021
Times Square—42nd Street Subway Station, (New York City Subway System MPS) Jct. of West 42nd St, and Broadway/Seventh Ave., New York, 04001016
Wall Street Subway Station (IRT), (New York City Subway System MPS) Under Broadway at Wall, Pine, Rector Sts. and Exchange Place, New York, 04001011

**Niagara County**

Cold Springs Cemetery, 4849 Cold Springs Rd., Lockport, 04000989
First Baptist Church, 6073 East Ave., Newfane, 04000987

**Ontario County**

Burnett Farmstead, 943 Burnett Rd., Phelps, 04000988

**Orange County**

Church Park Historic District (Boundary Increase), South St., Green St., South Church St., Kelsey Ln., Goshen, 04000991
Fury Brook Farm, Kings Highway, Sugar Loaf, 04000995

**Schenectady County**

Jones, George Westinghouse, House, 1944 Union St., Niskayuna, 04000998

**St. Lawrence County**

Baldwin, Benjamin Gordon, House, 26 Baldwin Ave., Norwood, 04000994
Buck's Bridge United Methodist Church, 2927 Cty Rte 14, Buck's Bridge, 04000985

**Suffolk County**

Oheka, 135 W. Gate Dr., Cold Springs Hills, 04000996

**Tioga County**

Purple, Gilbert E., House, (Newark Valley MPS) 34 Maple Ave., Newark Valley, 04000992

**Washington County**

Straight, Elisha, House, 55 Main St., Hartford, 04000986

**Westchester County**

Osborn—Bouton—Mead House, 399 Poundridge Rd., South Salem, 04000990

**VERMONT**

**Windham County**

Brattleboro Downtown Historic District (Boundary Increase), Plaza Park, Main St. Jct. with Canal St., VT 119 and VT142 and 1 Holstein Place, Brattleboro, 04000982

**WASHINGTON**

**Lewis County**

Scout Lodge, 278 SE Adams Ave., Chehalis, 04001007

**Spokane County**

Brooks, Kenneth and Edna, House, 723 W. Sumner Ave., Spokane, 04001006

**Thurston County**

Olympia Downtown Historic District, Roughly bounded by State Ave., 8th Ave., Columbia St., and Franklin St., Olympia, 04001008

**WISCONSIN**

**Ashland County**

T. H. Camp (shipwreck), (Great Lakes Shipwreck Sites of Wisconsin MPS) Address Restricted, La Pointe, 04001001

**Dane County**

Fuhremann Canning Company Factory, 151 Market St., Sun Prairie, 04001003
Rutland United Brethren in Christ Meeting House and Cemetery, 687 US 14, Rutland, 04001002

**Green Lake County**

Green Lake Village Hall, 534 Mill St., Green Lake, 04000997

**Vilas County**

Government Boarding School at Lac du Flambeau, Address restrict, Lac du Flambeau, 04001005

**Waukesha County**

Pearl and Grand Avenue Historic District, Pearl Ave. bounded by Grand Ave. and Franklin St. and portions of Pleasant and Division Sts., Mukwonago, 04001004

[FR Doc. 04–19494 Filed 8–25–04; 8:45 am]
BILLING CODE 4312–51–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–491; Inv. No. 337–TA–481 (consolidated)]**

## In the Matter of: Certain Display Controllers and Products Containing Same and Certain Display Controllers With Upscaling Functionality and Products Containing Same; Termination of Consolidated Investigations; Issuance of Limited Exclusion Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, with respect to three respondents and has issued a limited exclusion order in the above-captioned consolidated investigation. The Commission has also determined to grant complainant's July 27, 2004, motion for leave to file a surreply, and to strike exhibits A and B attached to complainant's July 16, 2004, submission.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., or Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3061. 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 this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted Inv. No. 337–TA–481, *Certain Display Controllers with Upscaling Functionality and Products Containing Same* (''*Display Controllers I*'' or ''481 investigation'') on October 18, 2002, based on a complaint filed by Genesis Microchip (Delaware) Inc. (''Genesis'') of Alviso, CA naming Media Reality Technologies, Inc. of Sunnyvale, CA (''MRT''); Trumpion Microelectronics, Inc. (''Trumpion'') of Taipei City, Taiwan; and SmartASIC, Inc. of San Jose, CA as respondents. 67 FR 64411. On January 14, 2003, the then presiding ALJ issued an ID terminating respondent SmartASIC from the investigation on the basis of a settlement agreement. That ID was not reviewed by the Commission. The final ID in *Display Controllers I* (''the 481 Final ID'') issued on October 20, 2003. 68 FR 69719. The ALJ found no violation of section 337 based on his findings that respondents' accused products do not infringe claims 1–3, 5, 6, 9, 12, 13, 16, 17, 33–36, 38, or 39 of U.S. Patent No. 5,739,867 (''the '867 patent''), claims 1 and 9 of the '867 are invalid, and that complainant Genesis has not satisfied the domestic industry requirement of section 337.

On December 5, 2003, the Commission determined to review the 481 Final ID in part. *Id.* The Commission determined to review portions of the ALJ's claim construction, all of the ALJ's non-infringement findings, the ALJ's finding that complainant Genesis does not practice any claims of the '867 patent, and the ALJ's findings that neither the Spartan reference nor the ACUITY Application Note anticipate the asserted claims of the '867 patent. On review of the 481 Final ID, the Commission determined to reverse portions of the ALJ's claim construction and to remand the investigation to the ALJ. On January 20, 2004, the Commission ordered that the ALJ conduct further proceedings and make any findings necessary in order to determine whether, in light of the claim construction determinations made by the Commission: (a) The accused products in the 481 investigation infringe the asserted claims of the '867 patent; (b) complainant Genesis satisfies the technical prong of the domestic industry requirement; (c) the Spartan Zoom Engine constitutes prior art to the '867 patent and whether it anticipates the asserted claims of the '867 patent; and (d) the Acuity Application Note constitutes an enabling prior art reference that anticipates the asserted claims of the '867 patent. 69 FR 3602 (Jan. 26, 2004). On review of the 481 Final ID, the Commission remanded *Display Controllers I* to the ALJ. 69 FR 3602 (Jan. 26, 2004). The remand order directed that the ALJ issue his findings by May 20, 2004, and set a schedule for the filing by the parties of comments on the ALJ's findings and response comments. The remand order also extended the target date for completion of the 481 investigation to August 20, 2004.

The Commission instituted Inv. No. 337–TA–491, *Certain Display Controllers and Products Containing Same* (''Display Controllers II'' or ''491 investigation'') on April 14, 2003, based on a complaint filed on behalf of Genesis. 68 FR 17964 (Apr. 14, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain display controllers and products containing same by reason of infringement of claims 13 and 15 of U.S. Patent No. 6,078,361 (''the '361 patent''); certain claims of U.S. Patent No. 5,953,074 (''the '074 patent''); and certain claims of U.S. Patent No. 6,177,922 (''the 922 patent''). The notice of investigation named three respondents: Media Reality Technologies, Inc. of Taipei, Taiwan; MRT; and Trumpion. *Id.* Both Trumpion and MRT were also named respondents in *Display Controllers I.*

On June 20, 2003, the ALJ issued an ID (Order No. 5) amending the complaint and notice of investigation in *Display Controllers II* to add MStar Semiconductor, Inc. (''MStar'') as a respondent, additional claims of the '074 patent, and claims 1–3, 5, 6, 9, 12, 13, 16, 17, 33–36, 38, and 39 of the '867 patent, the same patent at issue in the 481 investigation. That ID was not reviewed by the Commission. 68 FR 44967 (July 31, 2003).

On November 10, 2003, the ALJ issued an ID (Order No. 38) granting complainant's motion to terminate the *Display Controllers II* investigation with respect to Trumpion, the '922 patent, and the '074 patent. That ID was not reviewed by the Commission.

On January 6, 2004, a tutorial session was held in *Display Controllers II.* An evidentiary hearing was held on January 6–15, 20, and February 2–3, 2004. On April 14, 2004, the ALJ issued his final ID (''the 491 Final ID'') and recommended determination on remedy and bonding in *Display Controllers II.* In the 491 Final ID, the ALJ found a violation of section 337 with respect to respondent MStar, but no violation with respect to respondent MRT.

Complainant Genesis, respondents MRT and MStar, and the Commission investigative attorney each petitioned for review of portions of the 491 Final ID, and filed responses to the petitions for review. On May 13, 2004, respondent MStar filed a motion for leave to reply and with an attached reply.

On May 20, 2004, the ALJ issued an ID in *Display Controllers I* (''the 481 Remand ID'') on remand. In the 481 Remand ID, the ALJ found a violation of section 337 with respect to both respondents in *Display Controllers I,* MRT and Trumpion.

On May 21, 2004, the Commission issued an order consolidating the 481 and 491 investigations and set the target date for completion of the consolidated investigation to August 20, 2004.

On June 2, 2004, respondent Trumpion filed a petition for review of the 481 Remand ID. On the same day, the IA filed comments on issues decided in the 481 Remand ID. On June 7, 2004, respondent MRT filed a petition for review of the 481 Remand ID. The IA and complainant Genesis filed timely responses to the petitions.

On July 6, 2004, the Commission determined to review portions of the 481 Remand ID and portions of the 491 Final ID. 69 FR 41846.

In its review notice, the Commission invited the parties to file written submissions on the issues under review, invited interested persons to file written submissions on the issues of remedy, the public interest and bonding, and provided a schedule for filing such submissions. The Commission also requested briefing from the parties on six questions. Initial briefs were filed on July 16, 2004, and reply briefs were filed on July 23, 2004. On July 27, 2004, Genesis filed a motion for leave to file a surreply to MStar's reply brief with attached surreply. On July 29, 2004, MStar filed its opposition to Genesis's motion.

Having reviewed the record in this consolidated investigation, including the parties' written submissions and responses thereto, the Commission determined as follows: (1) There is a violation of section 337 by respondent MStar with respect to claims 2, 33, 34, 35, and 36 of the '867 patent, but no violation with respect to claims 1 and 9 of the '867 patent; (2) there is a violation of section 337 by respondent MRT with respect to claims 2, 3, 5, 6, 12, 13, 16, 17, 33–36, 38, and 39 of the '867 patent; and (3) there is a violation of section 337 by respondent Trumpion with respect to claims 2, 33–35, and 36 of the '867 patent. The Commission previously found that there is no violation of section 337 by any respondent with respect to the '361 patent because it determined not to review the ALJ's infringement findings with respect to the limitations of claim elements 13(a) or 15(a) and not to review the ALJ's findings that complainant's Detroit products and Jasper/Reno products do not practice the limitations of claim elements 13(a) or 15(a) as required to satisfy the technical prong of the domestic industry requirement.

Having determined that a violation of section 337 has occurred in the importation, sale for importation, or sale in the United States of the accused display controllers, the Commission considered the issues of the appropriate form of relief, whether the public interest precludes issuance of such relief, and the bond during the 60-day Presidential review period.

The Commission determined that a limited exclusion order prohibiting the importation of the accused display controllers, as well as circuit boards and LCD monitors (exclusive of television monitors) containing same, directed to respondents MRT, Trumpion, and MStar is the appropriate form of relief. The Commission further determined that the statutory public interest factors

do not preclude the issuance of such relief, and that respondent's bond under the limited exclusion order shall be in the amount of $1.00 per covered product.

The Commission also determined to grant complainant's July 27, 2004, motion for leave to file a surreply, and to strike exhibits A and B attached to complainant's July 16, 2004, submission.

The Commission's opinion setting forth its reasoning shall issue shortly.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.45–210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.45–210.51).

Issued: August 20, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04–19502 Filed 8–25–04; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–384 and 731–TA–806–808 (Review)]**

## Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia

**AGENCY:** International Trade Commission.

**ACTION:** Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on certain hot-rolled flat-rolled carbon-quality steel products from Brazil and Japan, the suspended countervailing duty investigation on certain hot-rolled flat-rolled carbon-quality steel products from Brazil, and the suspended antidumping duty investigation on certain hot-rolled flat-rolled carbon-quality steel products from Russia.

**SUMMARY:** The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the orders and terminations of the suspended investigations would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** August 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** On August 6, 2004, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. With regard to subject hot-rolled flat-rolled carbon-quality steel products from Russia, the Commission found that both the domestic and respondent interested party group responses to its notice of institution (69 FR 24189, May 3, 2004) were adequate. With regard to subject hot-rolled flat-rolled carbon-quality steel products from Brazil and Japan, the Commission found that the domestic interested party group responses were adequate and the respondent interested party group responses were inadequate. Although the Commission did not receive a response from any respondent interested parties in the reviews concerning subject imports from Brazil and Japan, it determined to conduct full reviews to promote administrative efficiency in light of its decision to conduct a full review with respect to the review concerning subject imports from Russia. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 23, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04–19522 Filed 8–25–04; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–414 and 731–TA–928 (Section 129 Consistency Determination)]**

## Softwood Lumber From Canada

**AGENCY:** International Trade Commission.

**ACTION:** Scheduling of a proceeding under section 129(a)(4) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3538(a)(4)).

**SUMMARY:** The Commission hereby gives notice of the scheduling of this proceeding following receipt on July 27, 2004, of a request from the United States Trade Representative (USTR) for a determination under section 129(a)(4) of the URAA that would render the Commission's action in connection with Investigations Nos. 701–TA–414 and 731–TA–928 not inconsistent with the findings of the dispute settlement panel of the World Trade Organization (WTO) in its report entitled, ''United States—Investigation of the International Trade Commission in Softwood Lumber From Canada,'' WT/DS277/R. A notice of institution for this proceeding was issued on July 30, 2004 (69 FR 47461, Aug. 5, 2004).

For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** August 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jim McClure (202–205–3191), Office of Investigations, or Robin L. Turner (202–205–3103), Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for

this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On May 16, 2002, the Commission determined that an industry in the United States is threatened with material injury by reason of imports from Canada of softwood lumber found to be subsidized and sold in the United States at less than fair value (LTFV) (investigations Nos. 701–TA–414 and 731–TA–928, *Softwood Lumber from Canada,* USITC Pub. 3509 (May 2002). The Government of Canada subsequently requested review under the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes.* A WTO dispute settlement panel issued its final report, and found, inter alia, that action by the Commission in connection with its Softwood Lumber investigation under Title VII of the Tariff Act of 1930, ITC Investigation Nos. 701–TA–414 and 731–TA–928, is not in conformity with the obligations of the United States under the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* and the WTO *Agreement on Subsidies and Countervailing Measures.* The panel's findings in this regard are set out in paragraphs 7.87 to 7.96 and 7.122 of the panel report. Its conclusions based on these findings are set out in paragraphs 8.1 and 8.2 of the report. The panel report was adopted by the WTO Dispute Settlement Body on April 26, 2004. The USTR transmitted his request for this determination following receipt from the Commission on July 14, 2004, of an advisory report under section 129(a)(1) stating that the Commission has concluded that Title VII of the Tariff Act of 1930 permits it to take steps in connection with its action in *Softwood Lumber from Canada,* Investigations Nos. 701–TA–414 and 731–TA–928, that would render its action in that proceeding not inconsistent with the findings of the dispute settlement panel.

*Participation in this proceeding.*—Only those persons who were interested parties to the original investigation (*i.e.*, persons listed on the Commission Secretary's service list) may participate in this proceeding. See the Commission's notice of institution of this proceeding for information regarding participation and the limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) (69 FR 47461, Aug. 5, 2004).

*Limitations on the scope of this proceeding.*—This proceeding is being conducted in order for the Commission to make a determination that would render its action in *Softwood Lumber from Canada,* Investigations Nos. 701–TA–414 and 731–TA–928, not inconsistent with the findings of the WTO dispute settlement panel. Thus, this proceeding only involves issues related to the WTO dispute settlement findings and does not involve issues that were not in dispute in the WTO proceeding or on which the WTO dispute settlement panel found the United States in conformity with its obligations under the WTO. (The panel's findings are set out in paragraphs 7.87 to 7.96 and 7.122 of the panel report. Its conclusions based on these findings are set out in paragraphs 8.1 and 8.2 of the report.) Therefore, this proceeding will not involve any issue relating to the Commission's definitions of the domestic like product and domestic industry (including related parties), and the Commission's findings regarding the Maritime Provinces, effects of the subsidies or dumping, consideration of the nature of the subsidy and its likely trade effects, and cross-cumulation. Any material in the interested parties' oral or written submissions that addresses any of these excluded issues will be disregarded.

*Staff report.*—The prehearing staff report in this proceeding will be placed in the nonpublic record on September 30, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with this proceeding beginning at 9:30 a.m. on October 13, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 6. All parties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 8, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules and shall be limited to no more than fifty (50) double-spaced and single-sided pages of textual material; the deadline for filing is October 6. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 20; witness testimony must be filed no later than three days before the hearing. On October 29, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 1, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930 and section 129 of the URAA.

Issued: August 23, 2004.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 04–19521 Filed 8–25–04; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

August 19, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on (202) 693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Type of Review:* Extension with minor revision of a currently approved collection.

*Title: Quantum Opportunity Program Demonstration Net Impact Evaluation.*

*OMB Number:* 1205–0397.

*Frequency:* Other; Once in 2004/2005.

*Affected Public:* Individuals or households.

*Number of Respondents:* 842.

*Number of Annual Responses:* 842.

*Total Burden Hours:* 282.

*Estimated Time Per Response:* 20 minutes.

*Total annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* This revision to the information collection will provide for a third, and final, wave of the survey to be completed approximately 106 months (almost 9 years) after random assignment of the youth in the research sample. It will allow for an analysis of the impact of QOP on participants' outcomes including education and training, employment, earnings, public assistance participation, childbearing, and other behaviors and activities. The finding will be directly relevant for the future development of employment and training policy for youth at risk of dropping out of high school.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 04–19514 Filed 8–25–04; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Census of Fatal Occupational Injuries.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the Addresses section of this notice on or before October 25, 2004.

**ADDRESSES:** Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number (202) 691–7628 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Amy A. Hobby, BLS Clearance Officer, telephone number (202) 691–7628. (See Addresses section.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Bureau of Labor Statistics (BLS) was delegated responsibility by the Secretary of Labor for implementing Section 24(a) of the Occupational Safety and Health Act of 1970. This section states that ''the Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses * * * ''

Prior to the implementation of the Census of Fatal Occupational Injuries (CFOI), the BLS generated estimates of occupational fatalities for private sector employers from a sample survey of about 280,000 establishments. Studies showed that occupational fatalities were underreported in those estimates as well as those compiled by regulatory, vital statistics, and workers' compensation systems. Estimates varied widely between 3,000 and 10,000 annually. In addition, information needed to develop prevention strategies were often missing from these earlier programs.

In the late 1980s, the National Academy of Sciences study, *Counting Injuries and Illnesses in the Workplace*, and the report, *Keystone National Policy Dialogue on Work-Related Illness and Injury Recordkeeping*, emphasized the need for the BLS to compile a complete roster of work-related fatalities because of concern over the accuracy of using a sample survey to estimate the incidence of occupational fatalities. These studies also recommended the use of all available data sources to compile detailed information for fatality prevention efforts.

The BLS tested the feasibility of collecting fatality data in this manner in 1989 and 1990. The resulting CFOI was implemented in 32 States in 1991. National data covering all 50 States and the District of Columbia have been compiled and published for 1992–2002, approximately eight months after each calendar year.

The CFOI compiles comprehensive, accurate, and timely information on work-injury fatalities needed to develop effective prevention strategies. The system collects information concerning the incident, demographic information on the deceased, and characteristics of the employer.

Data are used to:

- Develop employee safety training programs;
- Develop and assess the effectiveness of safety standards; and

• Conduct research for developing prevention strategies.

In addition, States use the data to publish State reports, to identify State-specific hazards, to allocate resources for promoting safety in the workplace, and to evaluate the quality of work life in the State.

**II. Desired Focus of Comments**

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

**III. Current Action**

In 2002, 5,534 workers lost their lives as a result of injuries received on the job. This official systematic, verifiable count mutes controversy over the various counts from different sources. The CFOI count has been adopted by the National Safety Council and other organizations as the sole source of a comprehensive count of fatal work injuries for the U.S. If this information were not collected, the confusion over the number and patterns in fatal occupational injuries would continue, thus hampering prevention efforts. By providing timely occupational fatality data, the CFOI program provides safety and health managers the information necessary to respond to emerging workplace hazards.

During 2002, the BLS Washington staff responded to over 1,000 requests for CFOI data from various organizations. (This figure excludes requests received by the States for State-specific data.) In addition, the BLS Website averaged about 4,500 users per month.

Washington staff also responded to numerous requests from safety organizations for staff members to participate in safety conferences and seminars. The CFOI research file, made available to safety and health groups, is being used by 15 organizations to conduct studies on specific topics, such as fatalities involving forklifts, powerline electrocutions, homicides, falls from scaffolds, highway construction fatalities, fatalities to Hispanics, fatalities to young workers, and safety and health program effectiveness. (A current list of research articles and reports that include CFOI data can be found in the BLS Report 970, dated September 2003, Appendix I. Copies of this report are available upon request.)

*Type of Review:* Extension of a currently approved collection.

*Agency:* Bureau of Labor Statistics.

*Title:* Census of Fatal Occupational Injuries.

*OMB Number:* 1220–0133.

*Affected Public:* Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

*Frequency:* On occasion.

| Form | Total respondents | Total responses | Estimated time per response (minutes) | Estimated total burden (hours) |
|---|---|---|---|---|
| BLS CFOI–1 | 1,125 | 1,125 | 20 | 375 |
| Source Documents | 220 | 26,625 | 10 | 4,438 |
| Totals | 1,345 | 27,750 | 10 | 4,813 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 19th day of August, 2004.

**Cathy Kazanowski,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 04–19513 Filed 8–25–04; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–1218–0095(2004)]**

### Concrete and Masonry Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection Requirements (Paperwork)

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits comments concerning its request for an extension of the information collection requirements contained in the Standard on Concrete and Masonry Construction (29 CFR part 1926, subpart Q).

**DATES:** Comments must be submitted by the following dates:

*Hard Copy:* Your comments must be submitted (postmarked or received) by October 25, 2004.

*Facsimile and electronic transmission:* Your comments must be received by October 25, 2004.

**ADDRESSES:** You may submit comments, identified by OSHA Docket No. ICR–1218–0095(2004), by any of the following methods:

*Regular mail, express delivery, hand-delivery, and messenger service:* Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.t.

*Facsimile:* If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Electronic:* You may submit comments through the Internet at *http://ecomments.osha.gov/.* Follow instructions on the OSHA Webpage for submitting comments.

*Docket:* For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://OSHA.gov.* Comments, submissions and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

**FOR FURTHER INFORMATION CONTACT:** Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page.

Because of security related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page.

## II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The information-collection requirements, and their rational, contained in 29 CFR Part 1926, subpart Q Concrete and Masonry Construction are listed below.

Paragraph (c)(2) of § 1926.701 requires signs and barriers be erected to limit employee access to the post-tensioning area during tensioning operations. Paragraphs (a)(2) and (j)(1) are two general requirements to use lockout/tagout measures to protect workers from injury associated with equipment and machinery.

Paragraph (a)(2) of § 1926.703 requires employers to make available, at the jobsite, drawings or plans for: the jack layout, formwork (including shoring equipment), working decks, and scaffolds, as well as any revisions to these documents. Paragraph (a) of § 1926.705 requires employers engaged in lift-slab operations to have specific designs and plans detailing the lift-slab operation. Drawings, plans and/or designs are developed and kept available at the jobsite as a usual and customary business practice to be used by the various contractors during construction; therefore, OSHA assumes there are no burden hours or costs associated with preparing drawings, plans or designs and having them on the jobsite.

Section 1926.705(b) requires that jacks used for lifting operations be marked to indicate their rated capacity. Manufacturers of jacks rated the equipment as a usual and customary practice; therefore, OSHA assumes there are no burden hours or costs to employers for these marking requirements.

## III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## IV. Proposed Actions

OSHA is proposing to extend the information-collection requirements contained in the Standard on Concrete and Masonry Construction (28 CFR 1926, Subpart Q).

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Standard.

*Type of Review:* Extension of currently approved information-collection requirements.

*Title:* Concrete and Masonry Construction (29 CFR part 1926, Subpart Q).

*OMB Number:* 1218–0095.

*Affected Public:* Business or other for profit; Not-for-profit institutions; Federal government; State, local, or tribal government.

*Number of Respondents:* 280,000.

*Frequency of Response:* On occasion.

*Total Responses:* 280,000.

*Average Time per Response:* Five minutes (.08 hours) to post or place warning signs, locks or tags.

*Estimated Total Burden Hours:* 22,400 hours.

*Estimated Cost (Operation and Maintenance):* $0.

## V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on August 20, 2004.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 04–19532 Filed 8–25–04; 8:45 am]

BILLING CODE 4510–26–M

## MEDICARE PAYMENT ADVISORY COMMISSION

### Commission Meeting

**AGENCY:** Medicare Payment Advisory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commission will hold its next public meeting on Thursday, September 9, 2004, and Friday, September 10, 2004, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on September 9, and at 9 a.m. on September 10.

Topics for discussion include initial findings on congressionally mandated studies including: specialty hospitals; certified registered nurse first assistants; physician practice expenses; risk adjustment and other issues related to the adjusted average per capita cost (AAPCC); and beneficiary cost sharing in private plans. Additional presentations will include analysis on post-acute care outcomes and state lessons from the Medicare prescription drug card program. The Commission will also discuss work plans for a study on skilled nursing facility quality measures and home health quality.

Agendas will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's Web site (*www.MedPAC.gov*).

**ADDRESSES:** MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

**FOR FURTHER INFORMATION CONTACT:** Diane Ellison, Office Manager, (202) 220–3700.

**Mark E. Miller,**

*Executive Director.*

[FR Doc. 04–19528 Filed 8–25–04; 8:45 am]

BILLING CODE 6820–BW–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel, Literature section (Poetry Fellowships category) to the National Council on the Arts announced for September 21–23, 2004 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506, will be held as a meeting of the Arts Advisory Panel. All other information regarding this meeting remains unchanged.

Dated: August 19, 2004.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 04–19497 Filed 8–25–04; 8:45 am]

BILLING CODE 7537–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–313]**

### Entergy Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc., (the licensee) to withdraw its April 2, 2003, application as supplemented by letters dated November 21 and December 31, 2003, for proposed amendment to Renewed Facility Operating License No. DPR–51 for the Arkansas Nuclear One, Unit No. 1, located in Pope County, Arkansas.

The proposed amendment would have revised the technical specifications pertaining to the fuel enrichment, the spent fuel pool (SFP) boron concentration and criticality analysis, the SFP regions (including the use of Metamic poison panels in a portion of the SFP) and loading restrictions, and the loading patterns in the new fuel storage racks.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 13, 2003 (68 FR 25651). However, by letter dated June 24, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 2, 2003, as supplemented by letters dated November 21 and December 31, 2003, and the licensee's letter dated June 24, 2004, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of August 2004.

For the Nuclear Regulatory Commission.

**Thomas W. Alexion,**

*Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–19506 Filed 8–25–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on September 9–11, 2004, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 21, 2003 (68 FR 65743).

**Thursday, September 9, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:30 a.m.: Final Review of the License Renewal Application for the Dresden and Quad Cities Nuclear Plants* (Open)—The Committee will hear presentations by and hold discussions with representatives of the Exelon Generation Company, LLC and the NRC staff regarding the license renewal application for the Dresden Nuclear Power Station, Units 2 and 3 and Quad Cities Nuclear Power Station, Units 1 and 2, as well as the associated final Safety Evaluation Report prepared by the NRC staff.

*10:45 a.m.–11:45 a.m.: Proposed Changes to the License Renewal Program* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed changes to the license renewal program related to scoping and screening processes.

*12:45 p.m.–1:45 p.m.: Safety Evaluation for Proposed Amendment to Technical Specifications for Farley Units 1 and 2—Steam Generator Program* (Open)—The Commission will hear presentations by NRC staff regarding the safety evaluation for a proposed amendment to technical specifications for Farley Units 1 and 2—Steam Generator Program.

*2 p.m.–5:45 p.m.: Safeguards and Security* (Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Nuclear Energy Institute (NEI) regarding safeguards and security matters.

*6 p.m.–7 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

**Friday, September 10, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:30 a.m.: Assessment of the Quality of the Selected NRC Research Projects* (Open)—The Committee will discuss the preliminary results of the cognizant ACRS members' assessment of the quality of the NRC research projects on Sump Performance and on MACCS Code.

*10:45 a.m.–11:45 a.m.: Divergence in Regulatory Approaches Between U.S. and Other Countries* (Open)—The Committee will discuss a draft White Paper prepared by Dr. Nourbakhsh, ACRS Senior Staff Engineer, regarding divergence in regulatory approaches between U.S. and other Countries.

*12:45 p.m.–1:45 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee* (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

*1:45 p.m.–2 p.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

*2 p.m.–2:30 p.m.: Trip Report—AP1000 Workshop in China* (Open)—The Committee will hear a report by and hold discussions with Dr. Kress, ACRS member, who attended the International Workshop on AP1000 that was held in China on July 26–29, 2004.

*2:45 p.m.–3:15 p.m.: Trip Report—Chalk River Facility in Canada* (Open)—The Committee will hear a report by and hold discussions with Dr. Powers, ACRS member, who visited the Chalk River Facility in Canada.

*3:15 p.m.–4:15 p.m.: Draft Final ACRS Action Plan* (Open)—The Committee will discuss the draft final ACRS Action Plan.

*4:15 p.m.–6:30 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

**Saturday, September 11, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–12 Noon: Preparation of ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

*12 Noon–12:30 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 16, 2003 (68 FR 59644). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss and protect information classified as national security information as well as safeguard information pursuant to 5 U.S.C. 552b(c)(1) and (3).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 20, 2004.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 04–19507 Filed 8–25–04; 8:45 am]

BILLING CODE 7590–01–P

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Submission for OMB Review; Comment Request

**AGENCY:** Overseas Private Investment Corporation (OPIC).

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on June 22, 2004, in 69 FR 34712, at which time a 60-calendar day comment period was announced. This comment period ended August 23, 2004. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review.

Comments are again being solicited on the need for the information, the accuracy of the Agency's burden estimate: The quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form, OMB Control number 3420–0004, under review is summarized below.

**DATES:** Comments must be received within 30 calendar days of this Notice.

**ADDRESSES:** Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*OPIC Agency Submitting Officer:* Bruce I. Campbell, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

*OMB Reviewer:* David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–3897.

*Summary of Form Under Review:*

*Type of Request:* Form Renewal.

*Title:* Project Information Report.

*Form Number:* OPIC 71.

*Frequency of Use:* No more than once per contract.

*Type of Respondents:* Business or other institutions (except farms).

*Description of Affected Public:* U.S. companies investing overseas.

*Reporting Hours:* 40 hours per project.

*Number of Responses:* 30 per year.

*Federal Cost:* $2,781.00.

*Authority for Information Collection:* Title 22 USC 2191 (k)(2) and 2199 (h) of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* The project information report is necessary to elicit and record the information on the developmental, environmental, and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects, and reporting the results in aggregate form, as required by Congress.

Dated: August 23, 2004.

**Eli Landy,**

*Senior Counsel, Administrative Affairs, Department of Legal Affairs.*

[FR Doc. 04–19530 Filed 8–25–04; 8:45 am]

BILLING CODE 3210–01–M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act; September 9, 2004, Board of Directors Meeting

**TIME AND DATE:** Thursday, September 9, 2004, 10 a.m. (Open portion), 10:15 a.m. (Closed portion).

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

**STATUS:** Meeting open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

**MATTERS TO BE CONSIDERED:**

1. President's Report.
2. Approval of July 29, 2004 minutes (open portion).

**FURTHER MATTERS TO BE CONSIDERED:** (Closed to the Public 10:15 a.m.).

1. Finance Project—Africa.
2. Finance Project—Africa.
3. Finance Project—Africa.
4. Approval of July 29, 2004 minutes (closed portion).
6. Pending Major Projects.
7. Reports.

**CONTACT PERSON FOR INFORMATION:** Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: August 24, 2004.

**Connie M. Downs,**

*Corporate Secretary, Overseas Private Investment Corporation.*

[FR Doc. 04–19594 Filed 8–24–04; 10:52 am]

BILLING CODE 3210–01–M

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

*Summary:* In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and Purpose of Information Collection:* Sick Pay and Miscellaneous Payments Report; OMB 3220–0175. Under Section 6 of the Railroad Unemployment Insurance Act (RUIA) and Section 9 of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) maintains for each railroad employee a record of compensation paid to that employee by all railroad employers for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the compensation by the railroad employer(s). Further, the Railroad Retirement Solvency Act of 1983 added subsection 1(h)(8) to the RRA which expanded the definition of compensation for purposes of computing the Tier 1 portion of an annuity to include sickness payments and certain payments other than sick pay which are considered compensation within the meaning of Section 1(h)(8). The information reporting requirements for employers are prescribed in 20 CFR 209.

To enable the RRB to establish and maintain the record of compensation, employers are required under Section 6 of the RUIA and Section 9 of the RRA to file with the RRB, in such manner and form and at such times as the RRB by rules and regulation may prescribe, reports of compensation of employees.

The RRB utilizes Form BA–10, Report of Miscellaneous Compensation and Sick Pay, to collect information regarding sick pay and certain other types of payments, referred to as miscellaneous compensation, under Section 1(h)(8) of the Railroad Retirement Act from railroad employers. In addition, the form is used by employers to report any necessary adjustments in the amounts of sick pay or miscellaneous compensation. Employers have the option of submitting the reports on the aforementioned form, or, in like format, on magnetic tape, tape cartridges or PC diskettes. Submission of the mandatory reports is requested annually. One response is required of each respondent. No changes are proposed to Form BA–10. The completion time for Form BA–10 is estimated at 55 minutes per response.

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to Charles.Mierzwa@RRB.GOV. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to Ronald.Hodapp@RRB.GOV. Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. 04–19498 Filed 8–25–04; 8:45 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27884]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 19, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 10, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After **September 10, 2004**, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**NiSource Inc., *et al.* (70–10169)**

NiSource Inc. (''NiSource''), a registered public-utility holding company, Northern Indiana Public Service Company (''Northern Indiana''), Kokomo Gas and Fuel Company (''Kokomo''), Northern Indiana Fuel and Light Company, Inc. (''NIFL''), all public-utility company subsidiaries of NiSource, EnergyUSA, Inc., and its subsidiaries, PEI Holdings, Inc. (formerly known as Primary Energy, Inc.), NiSource Capital Markets, Inc. (''Capital Markets''), NiSource Corporate Services Company (''NiSource Services''), a subsidiary service company, NiSource Finance Corp. (''NiSource Finance''), Granite State Transmission, Inc., Crossroads Pipeline Company, NiSource Development Company, Inc., and its subsidiaries, NI Energy Services, Inc., and its subsidiaries, NiSource Energy Technologies, Inc., Columbia Assurance Agency, Inc., NiSource Retail Services Inc. (''Retail Services''), IWC Resources Corporation and its subsidiaries, Columbia Energy Group (''Columbia''), a registered public-utility holding company, Columbia Atlantic Trading Corporation, Columbia Deep Water Services Company, Columbia Energy Services Corporation and Columbia Remainder Corporation and its subsidiary, all located at 801 East 86th Avenue, Merrillville, Indiana 46410–6272; Bay State Gas Company (''Bay State''), Northern Utilities, Inc. (''Northern Utilities''), both gas utility companies, located at 300 Friberg Parkway, Westborough, Massachusetts 01581–5039; Columbia Gas of Kentucky, Inc. (''Columbia Kentucky''), Columbia Gas of Maryland, Inc. (''Columbia Maryland''), Columbia Gas of Ohio, Inc. (''Columbia Ohio''), Columbia Gas of Pennsylvania, Inc. (''Columbia Pennsylvania''), Columbia Gas of Virginia, Inc. (''Columbia Virginia''), all gas utility companies, and Columbia of Ohio Receivables Corporation (formerly known as Columbia Accounts Receivable Corporation), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas Transmission Corporation, located at 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146; Columbia Gulf Transmission Company, located at 2603 Augusta, Suite 125, Houston, Texas 77057; Columbia Network Services Corporation and its subsidiary, both located at 1600 Dublin Road, Columbus, Ohio 43215–1082; and NiSource Insurance Corporation Limited, located at 20 Parliament Street, P.O. Box HM 649, Hamilton HM CX, Bermuda (collectively ''Applicants''), have filed a post-effective amendment, as amended (''Application''), with the Commission under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and rule 54.

NiSource, directly and indirectly owns ten public utility subsidiary companies: Northern Indiana, Kokomo, NIFL, Bay State, Northern Utilities, Columbia Kentucky, Columbia Maryland, Columbia Ohio, Columbia Pennsylvania and Columbia Virginia (collectively, ''Utility Subsidiaries''). By order dated December 30, 2003 (NiSource, Inc., *et al.*, Holding Co. Act Release No. 27789) (''Prior Order''), the Commission authorized NiSource, the Utility Subsidiaries and certain of NiSource's nonutility subsidiaries to engage in a program of financing, to organize and acquire the securities of certain new subsidiaries, to engage in certain nonutility businesses and to engage in other related transactions in the ordinary course of business. Specifically, among other things, NiSource, the Utility Subsidiaries and certain of the nonutility subsidiaries were authorized to participate in the NiSource System Money Pool (''Money Pool'').[1] The participating NiSource subsidiaries were authorized to make borrowings from each other and from NiSource Finance Corp., a financing subsidiary of NiSource, through the Money Pool.

NiSource now requests that Retail Services and Central Kentucky Transmission Company (''Central Kentucky'') be permitted to be

[1] By the Prior Order, no further Commission authorization is required for any new subsidiary of NiSource to participate in the Money Pool as a lender only. For the terms of the NiSource System Money Pool Agreement, *see also*, NiSource, Inc., *et al.*, Holding Co. Act Release Nos. 27479 (December 21, 2001), 27535 (June 3, 2002), 27559 (August 8, 2002).

borrowers in the Money Pool.[2] Applicants also request that the Commission reserve jurisdiction over the participation of any other current or future direct or indirect nonutility subsidiary of NiSource as a borrower in the Money Pool.

Retail Services, incorporated in November 2003 and an ''energy-related company'' under rule 58, renders energy-management services, sells, installs, and/or services standard gas and electric appliances, and provides other technical services, including, without limitation, in-house gas line maintenance and repair services. Central Kentucky, a new nonutility to be established as a subsidiary of Columbia Kentucky, will be a ''gas-related company'' under rule 58, organized by Columbia Kentucky to acquire and hold a 25% undivided interest in a segment of Columbia Gas Transmission Corporation's interstate pipeline and facilities located in Kentucky. Central Kentucky's pipeline will provide gas transportation service to Columbia Kentucky and unaffiliated third parties.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–1931 Filed 8–25–04; 8:45 am]

**BILLING CODE 8010–01–P**

[2] Both subsidiaries will be lenders to the Money Pool, as well.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–50220; File No. SR–BSE–2004–37]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Extend Its Clean Cross Rule to the Trading of Exchange-Listed Securities

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 18, 2004, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to replicate a section of its Nasdaq trading rules relating to orders to buy and sell the same security into its rules applicable to the trading of exchange-listed securities.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

**Rules of the Boston Stock Exchange**

Chapter II—Dealings on the Exchange

* * * * *

Sec. 18 Orders To Buy and Sell the Same Security

When a member has an order to buy and an order to sell the same security, he shall audibly offer such security, if bonds, at 1/8 of 1%, and if stocks, at the approved Minimum Price Variation (''MPV'') (as defined in Chapter II, Section 41), higher than his bid before making a transaction with himself.

*When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are for 5,000 shares or more and are for accounts other than the accounts of the executing member, the member may cross such orders at a price which is at or within the prevailing bid or offer. The member's bid or offer shall be entitled to priority at such cross price, provided that the proposed cross transaction is of a size greater than the aggregate size of all of the interest communicated on the Exchange floor at that price. Another member may trade with either the bid or offer side of the presented cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction.*

* * * * *

### 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 the 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 III 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 purpose of the proposed rule change is to restate a section of the Rules of the Board of Governors of the Exchange (the ''BSE Rules'') relating to Orders to Buy and Sell the Same Security (''Clean Cross Rule''). Currently, the Exchange has a Clean Cross Rule set forth in Chapter XXXV of the BSE Rules, which is applicable to the trading of Nasdaq securities.[3] The Exchange is seeking to restate this rule, verbatim, in Chapter II of the BSE Rules, so that it would also apply to the trading of exchange-listed securities. In extending its Clean Cross Rule to exchange-listed securities, the BSE believes it would be on a competitive par with other exchanges that have Clean Cross Rules. The BSE notes, for example, that the American Stock Exchange (''Amex'') has a Clean Cross Rule upon which the BSE Clean Cross Rule is based.[4]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate, by virtue of any authority, matters not related to the administration of the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition.

[3] *See* Chapter XXXV, section 6 of the BSE Rules.

[4] *See* Amex Rule 126, Commentary .02. *See also, e.g.*, Article XX, Rule 23 of the Chicago Stock Exchange, Incorporated (Order to Buy and Sell the Same Security); Rule 126 of the Philadelphia Stock Exchange, Inc. (''Crossing'' Orders).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. 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–BSE–2004–37 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 SR–BSE–2004–37. 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 Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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 SR–BSE–2004–37 and should be submitted on or before September 16, 2004.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[8]

The rule change will allow a member to initiate a clean cross transaction in an exchange-listed security of 5,000 shares or more at a price at or within the prevailing bid or offer. The Commission believes that such a rule strikes a reasonable balance between allowing floor brokers on the Exchange to execute crossing transactions and allowing specialists and market makers to provide price improvement. The Commission also believes that the 5,000 share threshold will ensure that the proposed rule change will apply primarily to larger block-sized orders where the depth of the prevailing bid or offer may be less likely to satisfy either side of the clean cross. The Commission notes that the proposed rule change preserves the auction market principle of price improvement by permitting the cross transaction to be broken up at a better price.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

Because it previously has approved similar rules on other exchanges[9] as well as a substantively identical BSE rule that provides for clean cross transactions in Nasdaq securities,[10] the Commission believes that accelerated approval of a BSE rule that provides for clean cross transactions in exchange-listed securities is appropriate.

**V. Conclusion**

Is it therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–BSE–2004–37) be, and it hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4–1930 Filed 8–25–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] *See, e.g.*, Amex Rule 126, Commentary .02. *See also* Securities Exchange Act Release No. 44123 (March 28, 2001), 66 FR 18124 (April 5, 2001) (SR–Amex–01–02) (approving Amex Rule 126, Commentary .02); Securities Exchange Act Release No. 47345 (February 11, 2003), 68 FR 8316 (February 20, 2002) (SR–Amex–2002–89) (reducing minimum number of shares eligible for Amex Clean Cross Rule to 5,000).

[10] *See* Chapter XXXV, section 6 of the BSE Rules. *See also* Securities Exchange Act Release No. 44952 (October 18, 2001), 66 FR 54039 (October 25, 2001) (SR–BSE–2001–01) (approving Chapter XXXV, section 6 of the BSE Rules).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3616]**

### State of North Carolina

Dare County and the contiguous counties of Currituck, Hyde, and Tyrell in the State of North Carolina constitute a disaster area as a result of Hurricane Alex on August 3, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 18, 2004 and for economic injury until the close of business on May 19, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 6.375 |
| Homeowners without credit available elsewhere | 3.187 |
| Businesses with credit available elsewhere | 5.800 |
| Businesses and non-profit organizations without credit available elsewhere | 2.900 |
| Others (including non-profit organizations) with credit available elsewhere | 4.875 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 2.900 |

The number assigned to this disaster for physical damage is 361608 and for economic damage is 9ZP800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 19, 2004.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 04–19500 Filed 8–25–04; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Advisory Committee on Veterans Business Affairs; Public Meeting

### The SBA Advisory Committee on Veterans Business Affairs

The U.S. Small Business Administration (SBA), pursuant to the Veterans Entrepreneurship and Small Business Development Act of 1999 (Public Law 106–50), will be hosting its third meeting of fiscal year 2004, the Advisory Committee on Veterans Business Affairs. The meeting will begin on Wednesday, September 8, 2004, until Thursday, September 9, 2004, starting at 9 a.m. until 5 p.m. The meeting will be held at the U.S. Small Business Administration Headquarters, located at 409 3rd Street, SW., Washington, DC 20416, in the Eisenhower Conference Room, located on the 2nd floor, Side B.

If you have any questions or concerns regarding this meeting, please contact Cheryl Clark in the Office of Veterans Business Development (OVBD) at (202) 205–6773.

**Matthew K. Becker,**

*Committee Management Officer.*

[FR Doc. 04–19499 Filed 8–25–04; 8:45 am]

**BILLING CODE 8025–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee; Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice and request for comments.

**SUMMARY:** The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is requesting written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). The Subcommittee will consider these comments in developing recommendations on AGOA country eligibility for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor for the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000. This notice identifies the eligibility criteria that must be considered under AGOA, and lists those sub-Saharan African countries that are currently eligible for AGOA and those that are currently ineligible for the AGOA.

**DATES:** Public comments are due at the Office of the United States Trade Representative (USTR) by noon, Friday, September 17, 2004.

**ADDRESSES:** Submission by electronic mail: *FR0444@ustr.gov.* Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. See requirements for submissions below.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions, please contact Gloria Blue, Office of the United States Trade Representative, 600 17th Street, NW., Room F516, Washington, DC 20508, (202) 395–3475. All other questions should be directed to Constance Hamilton, Senior Director for African Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9514.

**SUPPLEMENTARY INFORMATION:** The AGOA (Title I of the Trade and Development Act of 2000, Public Law 106–200) (19 U.S.C. 3721 *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiary sub-Saharan African countries eligible for duty-free tariff treatment for certain products under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (the ''1974 Act'')), as well as for the preferential treatment the AGOA provides for certain textile and apparel articles.

The President may designate a country as a beneficiary sub-Saharan African country eligible for both the additional GSP benefits and the textile and apparel benefits of the AGOA (if the country also meets certain statutory requirements intended to prevent unlawful transshipment of such articles) if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of the AGOA; and (2) section 502 of the 1974 Act. For 2004, 37 countries have been designated as beneficiary sub-Saharan African countries. These countries, as well as the 11 currently ineligible countries, are listed below. Section 506A of the 1974 Act provides that the President shall monitor, review, and report to Congress annually on the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine whether each beneficiary sub-Saharan African country should continue to be eligible, and whether each sub-Saharan African country that is currently not a beneficiary sub-Saharan African country should be designated as such a country. The President's determinations will be included in the annual report submitted to Congress as required by Section 106 of the AGOA. Section 506A of the 1974 Act requires that, if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country.

The Subcommittee is seeking public comments in connection with the annual review of the eligibility of beneficiary sub-Saharan African countries for the AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the 1974 Act.

### Beneficiary Sub-Saharan African Countries

*The following have been designated as beneficiary sub-Saharan African countries for 2004:*

Republic of Angola, Republic of Benin, Republic of Botswana, Republic of Cameroon, Republic of Cape Verde, Republic of Chad, Republic of the Congo, Republic of Côte d'Ivoire, Democratic Republic of the Congo, Republic of Djibouti, Ethiopia, Gabonese Republic, Republic of The Gambia, Republic of Ghana, Republic of Guinea, Republic of Guinea-Bissau, Republic of Kenya, Kingdom of Lesotho, Republic of Madagascar, Republic of Malawi, Republic of Mali, Islamic Republic of Mauritania, Republic of Mauritius, Republic of Mozambique, Republic of Namibia, Republic of Niger, Federal Republic of Nigeria, Republic of Rwanda, Democratic Republic of São Tomè and Principe, Republic of Senegal, Republic of Seychelles, Republic of Sierra Leone, Republic of South Africa, Kingdom of Swaziland,

United Republic of Tanzania, Republic of Uganda, Republic of Zambia.

**Sub-Saharan African Countries Not Designated as Beneficiary Countries**

*The following have not been designated as beneficiary sub-Saharan African countries for 2004:*

Burkina Faso, Republic of Burundi, Central African Republic, Federal Islamic Republic of the Comoros, Republic of Equatorial Guinea, State of Eritrea, Republic of Liberia, Somalia, Republic of Togo, Republic of Sudan, Republic of Zimbabwe.

*Requirements for Submissions:* In order to facilitate the prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions to *FR0444@ustr.gov* in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile. Persons making submissions by e-mail should use the following subject line: ''2004 AGOA Annual Country Review.'' Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC–'' and the file name of the public version should begin with the characters ''P–''. The ''P–'' or ''BC–''should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

**Carmen Suro-Bredie,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 04–19556 Filed 8–25–04; 8:45 am]

BILLING CODE 3190–W4–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 28, 2004, and comments were due by July 27, 2004. No comments were received.

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

**FOR FURTHER INFORMATION CONTACT:** William Kurfehs, Maritime Administration, 400 7th Street SW., Washington, DC 20590. Telephone: (202) 366–2318; FAX: (202) 493–2180; or e-mail: *bill.kurfehs@marad.dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

**Maritime Administration (MARAD)**

*Title:* Application and Reporting Requirements for Participation in the Maritime Security Program.

*OMB Control Number:* 2133–0525.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Vessel operators.

*Forms:* None.

*Abstract:* The Maritime Security Act of 2003 provides for the enrollment of qualified vessels in the Maritime Security Program Fleet. Applications and amendments are used to select vessels for the fleet. Periodic reporting is used to monitor adherence of contractors to program parameters.

*Annual Estimated Burden Hours:* 224 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

*Comments are invited on:* 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; the accuracy of the agency's estimate 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. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**Authority:** 49 CFR 1.66.

Issued in Washington, DC, on August 20, 2004.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 04–19496 Filed 8–25–04; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34535]** [1]

### Kansas & Oklahoma Railroad, Inc.—Trackage Rights Exemption—Atlantic & Pacific Railroad and Transportation Company

Atlantic & Pacific Railroad and Transportation Company (APR) has agreed to grant local and overhead trackage rights to Kansas & Oklahoma Railroad, Inc. (KO), over 4 miles of rail line extending from the point of interchange with KO's main line at approximately milepost 87.0 (at or near Chase, KS) to the point of interchange with KO's main line at approximately milepost 91.0 (at or near Silica, KS).[2]

The transaction is scheduled to be consummated on or after August 13, 2004, the effective date of the exemption (7 days after the notice was filed).

[1] Through inadvertence, the docket number originally assigned to this proceeding was STB Finance Docket No. 34520.

[2] APR states that it has filed a notice f exemption to lease the line from KO and operate it. *See Atlantic & Pacific Railroad and Transportation Company-Lease and Operation Exemption-Kansas & Oklahoma Railroad*, STB Finance Docket No. 34451 (STB served July 20, 2004).

The purpose of the trackage rights is to allow KO to continue to provide rail service over the subject line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34535, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Craig Richey, 315 W. 3rd Street, Pittsburg, KS 66762.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 20, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–19529 Filed 8–25–04; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Comment Request for Financial Literacy and Education Commission National Strategy

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Request for comments.

**SUMMARY:** The Financial Literacy and Education Improvement Act established the Financial Literacy and Education Commission. On behalf of the Commission, the Department of the Treasury invites the public to comment on the development of a national strategy to promote the basic financial literacy and financial education of everyone in the United States.

**DATES:** Comments should be received on or before October 31, 2004 to be assured of consideration.

**ADDRESSES:** Written comments should be sent to Department of the Treasury, Financial Literacy and Education Commission, Room 5001B, 1500 Pennsylvania Avenue NW., Washington, DC 20220, or via e-mail to *flecstrategy@do.treas.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Michael Schutt at (202) 622–5770 (not a toll-free call), or by e-mail to the above address.

Additional information regarding the Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at: *http://www.treas.gov/financialeducation*.

**SUPPLEMENTARY INFORMATION:** The Financial Literacy and Education Improvement Act, which is Title V of the Fair and Accurate Credit Transactions Act of 2003 (the ''FACT Act'') (Pub. L. 108–159), established the Financial Literacy and Education Commission to improve financial literacy and financial education of persons in the United States.

*Request for Comments:* Comments are specifically requested concerning: (1) What are the three most important issues that the national strategy should address, and why? (2) What existing resources may be used to address those issues, and how could they be employed? (3) What are the best ways to improve financial literacy and financial education in the United States? Commenters are urged to keep comments succinct and responsive to these questions.

*The Commission:* The Commission is chaired by the Secretary of the Treasury and is composed of the heads of the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the National Credit Union Administration; the Securities and Exchange Commission; the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs; the Federal Trade Commission; the General Services Administration; the Small Business Administration; the Social Security Administration; the Commodity Futures Trading Commission; and the Office of Personnel Management. The Commission is required, not later than 18 months after the date of enactment of the FACT Act, to develop a national strategy to promote basic financial literacy and education among all American consumers. The FACT Act was enacted on December 4, 2003.

Dated: August 20, 2004.

**Dan Iannicola, Jr.,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 04–19527 Filed 8–25–04; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Disciplinary Appeals Board Panel

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice with request for comments.

**SUMMARY:** Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 (Pub. L. 102–40), dated May 7, 1991, revised the disciplinary grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board panel from which Board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided, without charge, a list of the names of employees on the panel upon request and may submit comments concerning the suitability for service on the panel of any employee whose name is on the list.

**DATES:** Names that appear on the panel may be selected to serve on a Board or as a grievance examiner after September 27, 2004.

**ADDRESSES:** Requests for the list of names of employees on the panel and written comments may be directed to: Secretary of Veterans Affairs (051E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Requests and comments may also be faxed to (202) 273–9776.

**FOR FURTHER INFORMATION CONTACT:** Catherine Baranek, Employee Relations Specialist (051), Office of Human Resources Management and Labor Relations, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Baranek may be reached at (336) 631–5019.

**SUPPLEMENTARY INFORMATION:** Pub. L. 102–40 requires that the availability of the roster be posted in the **Federal Register** periodically, and not less than annually.

Dated: August 19, 2004.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

[FR Doc. 04–19495 Filed 8–25–04; 8:45 am]

**BILLING CODE 8320–01–M**

# Corrections

Federal Register

Vol. 69, No. 165

Thursday, August 26, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket Nos. 94–1, 96–262; DA 04–2475]**

## Reconsideration of 1997 Price Cap Review Order

*Correction*

In notice document 04–18804 beginning on page 51081 in the issue of Tuesday, August 17, 2004, make the following correction:

On page 51081, in the second column, under the heading ''**DATES**'', in the second and third lines, ''Ocrober 18, 2004'' should read ''October 1, 2004''.

[FR Doc. C4–18804 Filed 8–25–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
August 26, 2004

# Part II

# Environmental Protection Agency

## 40 CFR Part 312

## Standards and Practices for All Appropriate Inquiries and Notice of Public Meeting To Discuss Standards and Practices for All Appropriate Inquiries; Proposed Rules

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 312**

**[SFUND–2004–0001; FRL–7806–2]**

**RIN 2050–AF04**

## Standards and Practices for All Appropriate Inquiries

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) today is proposing federal standards and practices for conducting all appropriate inquiries as required under Sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposed rule would establish specific regulatory requirements and standards for conducting all appropriate inquiries into the previous ownership, uses, and environmental conditions of a property for the purposes of meeting the all appropriate inquiries provisions necessary to qualify for certain landowner liability protections under CERCLA. The standards and practices proposed today also would be applicable to persons conducting site characterization and assessments with the use of grants awarded under CERCLA Section 104(k)(2)(B).

**DATES:** Comments on today's proposed rule must be submitted on or before October 25, 2004. Comments postmarked after this date will be marked ''late'' and may not be considered. Any person may request a public hearing on this proposal by filing a request by September 10, 2004.

**ADDRESSES:** Submit your comments, identified by Docket ID No. SFUND–2004–0001, by one of the following methods:

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

2. 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.

3. E-mail: Comments may be sent by electronic mail to *superfund.docket@epa.gov,* /Attention Docket ID No. SFUND–2004–0001.

4. Mail: Send comments to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. SFUND–2004–0001. 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.

5. Hand Delivery: Deliver your comments to: EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. SFUND–2004–0001. 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. SFUND–2004–0001. 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). For additional instructions on submitting comments, go to Unit I.C. of the **SUPPLEMENTARY INFORMATION** section of this document.

*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 EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0276.

If you would like to file a request for a public hearing on this proposed rule, please submit your request to Ms. Linda Garczynski at: Office of Brownfields Cleanup and Redevelopment (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or via e-mail at *garczynski.linda@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA/Superfund/EPCRA/UST Call Center at (800) 424–9346 (toll free) or TDD (800) 553–7672 (hearing impaired). In the Washington, DC Metropolitan area, call (703) 412–3323 or TDD (703) 412–9810. For detailed information on specific aspects of the proposed rule, contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment at (202) 566–2774 or at *overmeyer.patricia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

#### *A. Who Potentially May Be Affected by Today's Proposed Rule?*

If promulgated as proposed, this regulation may affect most directly those persons and businesses purchasing commercial property or any property that will be used for commercial purposes and who may, after purchasing the property, seek to claim protection from CERCLA liability for releases or threatened releases of hazardous substances. Under section 101(35)(B) of CERCLA, as amended by the Small Business Liability Relief and Brownfields Redevelopment Act (Pub. L. 107–118, 115 stat. 2356, ''the Brownfields Amendments'') such persons and businesses are required to conduct all appropriate inquiries prior to or on the date in which the property is acquired. Prospective property owners who do not conduct all

appropriate inquiries prior to obtaining ownership of the property may lose their ability to claim protection from CERCLA liability as an innocent landowner, bona fide prospective purchaser, or contiguous property owner.

In addition, today's proposal will affect any party who receives a brownfields grant awarded under CERCLA Section 104(k)(2)(B) and uses the grant money to conduct site characterization or assessment activities. This includes state, local and tribal governments that receive brownfields site assessment grants for the purpose of conducting site characterization and assessment activities. Such parties are required under CERCLA Section 104(k)(2)(B)(ii) to conduct such activities in compliance with the standards and practices established by EPA for the conduct of all appropriate inquiries. EPA notes that today's rule also may affect other parties who apply for brownfields grants under the provisions of Section 104(k), since such parties may have to qualify as a bona fide prospective purchaser to ensure compliance with the statutory prohibitions on the use of grant funds under Section 104(k)(4)(B)(i). Any party seeking liability protection as a bona fide prospective purchaser, including eligible brownfields grantees, must conduct all appropriate inquiries prior to acquiring a property.

The background document, ''Economic Impacts Analysis for the All Appropriate Inquiries Proposed Regulation,'' presents a comprehensive analysis of all potentially impacted entities. This document is available in the docket established for today's proposed rule. A summary of potentially affected businesses is provided in the table below.

Our aim in the table below is to provide a guide for readers regarding entities likely to be directly regulated or indirectly affected by this action. This action, however, may affect other entities not listed in the table. To determine whether you or your business is regulated or affected by this action, you should examine the proposed regulatory language amending CERCLA. This language is found at the end of this **Federal Register** notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

| Industry category | NAICS code |
|---|---|
| Manufacturing | 31–33 |
| Wholesale Trade | 42 |
| Retail Trade | 44–45 |
| Finance and Insurance | 52 |
| Real Estate | 531 |
| Professional, Scientific and Technical Services | 541 |
| Accommodation and Food Services | 72 |
| Repair and Maintenance | 811 |
| Personal and Laundry Services | 812 |
| State, Local and Tribal Government | N/A |

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. SFUND–2004–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to today's 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. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue 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 Federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0276.

2. *Electronic Access.* You may access the **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.* Comments on the proposed rule can be submitted through the federal e-rulemaking portal, *http://www.regulations.gov.*

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

Certain types of information will not be placed in EDOCKET. 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. Docket materials that are not available electronically may be viewed at the docket facility identified in Section I.B. EPA intends to work toward 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 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. What Should I Consider as I Prepare My Comments for EPA?*

a. *Submitting Public Comments.* You may submit comments electronically, by mail, or through hand delivery/courier, as explained in the **ADDRESSES** section of this document. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider late comments.

b. *Submitting CBI.* Do not submit information that you consider to be confidential business information (CBI) electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: CERCLA CBI Document Control Officer, Office of Solid Waste and Emergency Response (5101T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. SFUND–2004–0001. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR, Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

c. *Tips for Preparing Your Comments.* You may find the following suggestions helpful for preparing your comments:

i. Identify the rulemaking by docket number and other identifying information (*e.g.*, subject heading, **Federal Register** date and page number).

ii. Explain your views as clearly as possible.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used to support your views.

v. If you estimate potential burden or costs, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternative.

vii. Make sure to submit your comments by the comment period deadline identified.

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## I. Statutory Authority

These regulations are proposed under the authority of Section 101(35)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended, most importantly by the Small Business Liability Relief and Brownfields Redevelopment Act.

## II. Background

### *A. What Is the Intent of Today's Proposed Rule?*

The intent of today's proposed rule is to propose regulations setting federal standards and practices for the conduct of ''all appropriate inquiries.'' This regulatory action was initiated in response to legislative amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118, 115 stat. 2356, ''the Brownfields Amendments''). The Brownfields Amendments amend CERCLA by providing funds to assess and clean up brownfields sites, clarifying CERCLA liability provisions for certain landowners, and providing funding to enhance state and tribal clean up programs. Today's regulatory action proposes standards and practices for the conduct of ''all appropriate inquiries,'' a key provision of the Brownfields Amendments. Subtitle B of Title II of the Brownfields Amendments revises CERCLA Section 101(35), clarifying the requirements necessary to establish the innocent landowner defense. In addition, the Brownfields Amendments add protections from CERCLA liability for bona fide prospective purchasers and contiguous property owners who meet certain statutory requirements.

Each of the CERCLA liability provisions for innocent landowners, bona fide prospective purchasers, and contiguous property owners, requires that, among other requirements, persons

claiming the liability protections conduct all appropriate inquiries into prior ownership and use of a property prior to or at the time at which a person acquires a property. The law requires EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries and promulgate the standards within two years of enactment of the Amendments. Congress included in the Brownfields Amendments a list of criteria that the Agency must address in the regulations establishing standards and practices for conducting all appropriate inquiries § 101(35)(2)(B)(ii) and (iii). The Brownfields Amendments also require that parties receiving a federal brownfields grant awarded under CERCLA Section 104(k)(2)(B) conduct site characterizations and assessments and must conduct these activities in accordance with the standards and practices for all appropriate inquiries.

The regulations proposed today only address the all appropriate inquiries provisions of CERCLA Sections 101(35)(B)(i)(I) and 101(35)(B)(ii) and (iii). Today's proposed rule does not address the requirements of CERCLA Section 101(35)(B)(i)(I) for what constitutes ''reasonable steps.''

*B. What Is ''All Appropriate Inquiries?''*

An essential step in real property transactions is evaluating a property for potential environmental contamination and assessing potential liability for contamination present at the property. The process for assessing properties for the presence of environmental contamination often is referred to as ''environmental due diligence,'' or ''environmental site assessment.'' The Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or Superfund, provides for a similar, but legally distinct, process referred to as ''all appropriate inquiries.''

Under CERCLA, persons may be held strictly liable for cleaning up hazardous substances at properties that they either currently own or operate or owned or operated in the past. Strict liability under CERCLA means that liability for environmental contamination could be assigned based solely on property ownership.

In 1986, the Superfund Amendments and Reauthorization Act (Pub. L. No. 99–499, 100 stat. 1613, ''SARA'') amended CERCLA by creating an ''innocent landowner'' defense to CERCLA liability. The new Section 101(35)(B) of CERCLA provided a defense to CERCLA liability, for those persons who could demonstrate, among other requirements, that they ''did not know and had no reason to know'' prior to purchasing a property that any hazardous substance that is the subject of a release or threatened release was disposed of on, in, or at the property. Such persons, to demonstrate that they had ''no reason to know'' must have undertaken, prior to, or at the time of acquisition of the property, ''all appropriate inquiries'' into the previous ownership and uses of the property consistent with good commercial or customary practice. The 2002 Brownfields Amendments added potential liability protections for ''contiguous property owners'' and ''bona fide prospective purchasers'' who also must demonstrate they conducted all appropriate inquiries, among other requirements, to benefit from the liability protection.

*C. What Are the Current Standards for All Appropriate Inquiries?*

As part of the Brownfields Amendments to CERCLA, Congress established interim standards for the conduct of all appropriate inquiries. The federal interim standards established by Congress became effective on January 11, 2002. In the case of properties purchased after May 31, 1997, the interim standards include the procedures of the American Society for Testing and Materials (ASTM) Standard E1527–97 (entitled ''Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process''). In the case of persons who purchased property prior to May 31, 1997 and who are seeking to establish an innocent landowner defense or qualify as a contiguous property owner, the interim standards require that such persons must establish, among other statutory requirements, that they did not know and had no reason to know of releases or threatened releases to the property before the date they acquired the property. To establish they did not know and had no reason to know of releases or threatened releases, persons who purchased property prior to May 31, 1997 must demonstrate that they carried out all appropriate inquiries into the previous ownership and uses of the property in accordance with generally accepted good commercial and customary standards and practices.

In the case of property acquired by a non-governmental entity or non-commercial entity for residential or other similar uses, the current interim standards for all appropriate inquiries may not be applicable. For those cases, the Brownfields Amendments to CERCLA establish that a ''facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements'' for all appropriate inquiries. In addition, such properties are not within the scope of today's proposed rule.

The interim standards remain in effect until EPA promulgates federal regulations establishing standards and practices for conducting all appropriate inquiries.

On May 9, 2003, EPA published a final rule (68 FR 24888) clarifying that for the purposes of achieving the all appropriate inquiries standards of CERCLA Section 101(35)(B), and until the Agency promulgates regulations implementing standards for all appropriate inquiries, the procedures for persons who purchase property on or after May 31, 1997 may include either the procedures provided in ASTM E1527–2000, entitled ''Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process,'' or the earlier standard cited by Congress in the Brownfields amendments, ASTM E1527–97.

Today's notice is a proposed rule and as such has no effect upon the current interim standards for all appropriate inquiries established by Congress in the Brownfields Amendments and clarified by EPA in the May 9, 2003 final rule. However, once the Agency promulgates a final rule establishing federal regulations containing the standards and practices for conducting all appropriate inquiries, the interim standard will no longer be the operative standard for conducting all appropriate inquiries. Following the effective date of a new final regulation, the standards and practices included as the final regulation will replace the current interim standards for all appropriate inquiries.

The National Technology Transfer and Advancement Act (NTTAA), directs agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies (unless their use would be inconsistent with applicable law or otherwise impractical). We considered ASTM E1527–2000, for use in this rule and determined that the standard is inconsistent with applicable law because it does not meet the statutory criteria necessary to achieve the purpose of the rule. Section V.I of today's proposed rule provides additional detail on the basis for our interpretation with respect to this alternative. We invite public comment on our determination that the ASTM E1527–2000 Phase I Environmental Site Assessment Standard is inconsistent with applicable law.

*D. What Are the Liability Protections Established Under the Brownfields Amendments?*

The Brownfields Amendments provide important liability protections for landowners who qualify as contiguous property owners, bona fide prospective purchasers, or innocent landowners. To meet the statutory requirements for any of these landowner liability protections, a landowner must meet certain threshold requirements and satisfy certain continuing obligations. To qualify as a bona fide prospective purchaser, contiguous property owner, or innocent landowner, a person must perform ''all appropriate inquiries'' before acquiring the property. Bona fide prospective purchasers and contiguous property owners also must demonstrate that they are not potentially liable or affiliated with any other person that is potentially liable for response costs at the property. In the case of contiguous property owners, the landowner claiming to be a contiguous property owner also must demonstrate that he did not cause, contribute, or consent to any release or threatened release of hazardous substances. To meet the statutory requirements for a bona fide prospective purchaser, a property owner must have acquired a property subsequent to any disposal activities involving hazardous substances at the property.

Continuing obligations required under the statute include complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls; taking ''reasonable steps'' with respect to hazardous substances affecting a landowner's property to prevent releases; providing cooperation, assistance and access to EPA, a state, or other party conducting response actions or natural resource restoration at the property; complying with CERCLA information requests and administrative subpoenas; and providing legally required notices. For a more detailed discussion of these threshold and continuing requirements please see EPA, *Interim Guidance Regarding Criteria Landowners Must Meet in Order To Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability* (Common Elements, 2003). A copy of this document is available in the docket for today's proposed rule.

1. Bona Fide Prospective Purchaser

The Brownfields Amendments added the bona fide prospective purchaser provision at CERCLA Section 107(r). The provision provides protection from CERCLA liability, and limits EPA's recourse for unrecovered response costs to a lien on property for the increase in fair market value attributable to EPA's response action. To meet the statutory requirements for a bona fide prospective purchaser, a person must meet the requirements set forth in CERCLA Section 101(40). A bona fide prospective purchaser must have bought property after January 11, 2002 (the date of enactment of the Brownfields Amendments). A bona fide prospective purchaser may purchase property with knowledge of contamination after performing all appropriate inquiries, provided the property owner meets or complies with all of the other statutory requirements set forth in CERCLA Section 101(40). Conducting all appropriate inquiries *alone* does not provide a landowner with protection against CERCLA liability. Landowners who want to qualify as bona fide prospective purchasers must comply with *all* of the statutory requirements. The statutory requirements include, without limitation, that the landowner must:

- Have acquired a property after all disposal activities involving hazardous substances at the property;
- Provide all legally required notices with respect to the discovery or release of any hazardous substances at the property;
- Exercise appropriate care by taking reasonable steps to stop continuing releases, prevent any threatened future release, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substance;
- Provide full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restorations;
- Comply with land use restrictions established or relied on in connection with a response action;
- Not impede the effectiveness or integrity of any institutional controls;
- Comply with any CERCLA request for information or administrative subpoena; and
- Not be potentially liable, or affiliated with any other person who is potentially liable for response costs for addressing releases at the property.

Persons claiming to be bona fide prospective purchasers should keep in mind that failure to identify an environmental condition or identify a release or threatened release of a hazardous substance on, at, in or to a property during the conduct of all appropriate inquiries does *not* relieve a landowner from complying with the other post-acquisition statutory requirements for obtaining the liability protections. Landowners must comply with all the statutory requirements to obtain the liability protection. For example, an inability to identify a release or threatened release during the conduct of all appropriate inquiries does not negate the landowner's responsibilities under the statute to take reasonable steps to stop a release, prevent a threatened release, and prevent exposure to a release or threatened release. None of the other statutory requirements for the bona fide prospective purchaser liability protection is contingent upon the results of the conduct of all appropriate inquiries.

2. Contiguous Property Owner

The Brownfields Amendments added a new contiguous property owner provision at CERCLA Section 107(q). This provision excludes from the definition of ''owner'' or ''operator'' under CERCLA Section 107(a)(1) and (2) a person who owns property that is ''contiguous to, or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of hazardous substances from'' property owned by someone else. To qualify as a contiguous property owner, a landowner must have no knowledge of contamination prior to acquisition and meet all of the criteria set forth in CERCLA Section 107(q)(1)(A), which include, without limitation:

- Not causing, contributing, or consenting to the release or threatened release;
- Not being potentially liable nor affiliated with any other person who is potentially liable for response costs at the property;
- Taking reasonable steps to stop continuing releases, prevent any threatened release, and prevent or limit human, environmental, or natural resource exposure to any hazardous substances released on or from the landowner's property;
- Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restorations;
- Complying with land use restrictions established or relied on in connection with a response action;
- Not impeding the effectiveness or integrity of any institutional controls;
- Complying with any CERCLA request for information or administrative subpoena;
- Providing all legally required notices with respect to discovery or release of any hazardous substances at the property.

The contiguous property owner liability protection ''protects parties that are essentially victims of pollution incidents caused by their neighbor's actions.'' S. Rep. No. 107–2, at 10 (2001). Contiguous property owners must perform all appropriate inquiries prior to purchasing property. However, performing all appropriate inquiries in accordance with the regulatory requirements alone is not sufficient to assert the liability protections afforded under CERCLA. Property owners must fully comply with all of the statutory requirements to be afforded the contiguous property owner liability protection. Persons who know, or have reason to know, that the property is or could be contaminated prior to purchasing a property cannot qualify for the liability protection as a contiguous property owner, but may be entitled to bona fide prospective purchaser status.

Persons claiming to be contiguous property owners should keep in mind that failure to identify an environmental condition or identify a release or threatened release of a hazardous substance on, at, in or to a property during the conduct of all appropriate inquiries, does not relieve a landowner from complying with the other statutory requirements for obtaining the contiguous landowner liability limitation. Landowners must comply with all the statutory requirements to qualify for the liability protections. For example, an inability to identify a release or threatened release during the conduct of all appropriate inquiries does not negate the landowner's responsibilities under the statute to take reasonable steps to stop the release, prevent a threatened release, and prevent exposure to the release or threatened release. None of the other statutory requirements for the contiguous property owner liability protection is contingent upon the results of the conduct of all appropriate inquiries.

3. Innocent Landowner

The Brownfields Amendments also clarify the innocent landowner affirmative defense. To qualify as an innocent landowner, a person must conduct all appropriate inquiries and meet all of the statutory requirements. The requirements include, without limitation:

- Having no reason to know that any hazardous substance which is the subject of a release or threatened release was disposed of on, in, or at the facility;
- Providing full cooperation, assistance and access to persons authorized to conduct response actions at the property;
- Complying with any land use restrictions and not impeding the effectiveness or integrity of any institutional controls;
- Taking reasonable steps to stop continuing releases, prevent any threatened release, and prevent or limit human, environmental, or natural resource exposure to any hazardous substances released on or from the landowner's property;

To succeed in an innocent landowner liability defense, a property owner must demonstrate compliance with CERCLA Section 107(b)(3) as well. Such persons must establish, by a preponderance of the evidence:

- That the act or omission that caused the release or threat of release of hazardous substances and the resulting damages were caused by a third party with whom the person does not have employment, agency, or a contractual relationship;
- The person exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances;
- Took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeable result from such acts or omissions.

Like contiguous property owners, innocent landowners must perform all appropriate inquiries prior to acquiring a property and cannot know, or have reason to know, of contamination to qualify for this landowner liability protection. Persons claiming to be innocent landowners also should keep in mind that failure to identify an environmental condition or identify a release or threatened release of a hazardous substance on, at, in or to a property during the conduct of all appropriate inquiries, does not relieve or exempt a landowner from complying with the other statutory requirements for making the innocent landowner defense. Landowners must comply with all the statutory requirements to obtain the defense. For example, an inability to identify a release or threatened release during the conduct of all appropriate inquiries does not negate the landowner's responsibilities under the statute to take reasonable steps to stop the release, prevent a threatened release, and prevent exposure to the release or threatened release. None of the other statutory requirements for the innocent landowner defense is contingent upon the results of the conduct of all appropriate inquiries.

*E. What Criteria Did Congress Establish for the All Appropriate Inquiries Standard?*

Congress included in the Brownfields Amendments a list of criteria that the Agency must include in the regulations establishing standards and practices for conducting all appropriate inquiries. These criteria are set forth in CERCLA Section 101(35)(2)(B)(ii) and include:

- The results of an inquiry by an environmental professional.
- Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.
- Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.
- Searches for recorded environmental cleanup liens against the facility that are filed under federal, state, or local law.
- Reviews of federal, state, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.
- Visual inspections of the facility and of adjoining properties.
- Specialized knowledge or experience on the part of the defendant.
- The relationship of the purchase price to the value of the property, if the property was not contaminated.
- Commonly known or reasonably ascertainable information about the property.
- The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

In addition, Congress instructed EPA, in the Brownfields Amendments to develop regulations establishing standards and practices for conducting all appropriate inquiries in accordance with generally accepted good commercial and customary standards and practices.

*F. How Did EPA Go About Developing the Proposed Rule?*

Consistent with the Negotiated Rulemaking Act of 1996, 5 U.S.C. 561 *et seq.* (The Negotiated Rulemaking Act), EPA decided to use the negotiated rulemaking process to develop the proposed federal standards for conducting all appropriate inquiries.

The most important reason for using the regulatory negotiation process for developing the proposed federal standards is that all stakeholders, when consulted, strongly supported a consensus-based negotiated rulemaking effort. In addition, the Agency determined that a negotiated rulemaking committee composed of stakeholders familiar with good commercial and customary standards and practices, as well as the technical, scientific, and environmental policy issues relevant to environmental due diligence, would provide great benefit to the Agency in its attempt to fulfill the Congressional mandate. EPA also believed that a regulatory negotiation process would be less adversarial than if the Agency were to develop a proposed rule using its internal regulatory development process and that a regulatory negotiation could result in a proposed rule that would effectively reflect Congressional intent.

*G. What Is Negotiated Rulemaking?*

Using negotiated rulemaking to develop the proposed rule is fundamentally different than the Agency's internal rulemaking development process. Negotiated rulemaking is a process in which a proposed rule is developed by a committee composed of representatives of those interests that will be significantly affected by the rule. The process is started by the Agency's careful identification of the interests potentially affected by the rulemaking under consideration. To help in this identification process, the Agency publishes a notice in the **Federal Register**, that identifies a preliminary list of potentially affected interests and requests public comment on that list. Following receipt of the comments, the Agency establishes a formal advisory committee under the Federal Advisory Committee Act (FACA). A balanced membership representing these various interests is invited by the Agency to participate in the advisory committee. Representation on the committee may be direct, that is, each member represents a specific interest, or may be indirect, through coalitions of parties formed for this purpose. The Agency is a member of the committee representing the interests of all of the federal government.

Meetings of the committee are announced in the **Federal Register** and are open to observation by members of the public. Decisions of the committee are made by consensus, which generally means an agreement of all committee members that they can accept the provisions of the proposed rule when taken as a whole package. A neutral professional, or facilitator, impartially assists the negotiated rulemaking committee by applying proven consensus building techniques to the committee's activities. This professional facilitator serves several roles, including convening the process, facilitating meetings and mediating committee negotiations.

The negotiated rulemaking process involves a mutual education of the negotiating parties by each other on the practical concerns about the impact of each approach considered by the committee. All committee members participate in seeking to reach a consensus that resolves the concerns of the other members, rather than leaving it up to EPA to bridge different points of view. A key principle of negotiated rulemaking is that agreement is by consensus of all the members. Thus, no one interest or group of interests is able to control the process. The Negotiated Rulemaking Act defines consensus as ''the unanimous concurrence among interests represented on a negotiated rulemaking committee, unless the committee itself unanimously agrees to use a different definition.'' 5 U.S.C. 562(2).

When a regulatory negotiation advisory committee reaches consensus on the provisions of a proposed rule, the Agency generally uses such consensus language as the basis of its proposed rule, which is published in the **Federal Register**. This provides the required public notice and allows for a public comment period. Committee members agree to support the proposed rule as published if there are no substantive changes from the consensus provisions. Other interested parties retain their rights to comment, participate in an informal hearing (if requested) and judicial review. EPA anticipates, however, that the pre-proposal consensus agreed upon by a negotiated rulemaking committee will effectively address most major issues prior to publication of a proposed rule.

*H. What Was the Process that EPA Followed in Establishing and Conducting the Negotiated Rulemaking Committee?*

During the fall of 2002, EPA initiated the negotiated rulemaking process by identifying appropriate stakeholder groups and soliciting advice and input from experienced public and private sector users of similar standards. EPA retained an expert facilitator to contact parties potentially affected by the all appropriate inquiries rule to determine whether or not stakeholders were interested in participating in a negotiated rulemaking process and determine the potential for stakeholder issues to be successfully addressed through a regulatory negotiation. Following an evaluation of stakeholder interest and input, the facilitator found that there was sufficient enthusiasm among stakeholders for a negotiated rulemaking process and almost all stakeholders that EPA identified and the facilitator interviewed expressed a belief that potential issues and differences between interested parties could be successfully addressed and negotiated through the regulatory negotiation process. A description of the issues raised by identified stakeholders and a list of interested stakeholders, as well as the findings of the facilitator are contained in the final report entitled *Convening Assessment Report on the Feasibility of a Negotiated Rulemaking Process to Develop the All Appropriate Inquiry Standard Required under the Small Business Liability Relief and Brownfields Revitalization Act.* A copy of this final report is included in the regulatory docket for today's notice.

Following the convening process, the Agency determined that the use of a regulatory negotiation process in this matter was appropriate. The Agency then identified stakeholders and interest groups who potentially would be affected by the rulemaking under consideration. After identifying an initial list of potential interests, the Agency published a ''Notice of Intent to Negotiate'' in the **Federal Register** on March 6, 2003 (68 FR 10675) which identified the Agency's preliminary list of interests and requested public comment on that list of potential interests or stakeholder groups to include in the negotiated rulemaking process. Following receipt of public comments in response to that notice and the conduct of a public hearing to obtain public input, the Agency established a negotiated rulemaking advisory committee under the provisions of the Federal Advisory Committee Act (FACA). The advisory committee included a balanced membership representing the various interests identified either by EPA or by public commenters as having a significant stake in the outcome of the rulemaking. The Agency then published in the **Federal Register** a notice announcing the establishment of the Negotiated Rulemaking Committee on All Appropriate Inquiries (the Negotiated Rulemaking Committee) on April 7, 2003 (68 FR 16747).

The Agency developed a charter for the Negotiated Rulemaking Committee defining the purpose, scope and duration of the committee in accordance with the provisions of the FACA. The

primary purpose of the committee was to negotiate a consensus on the terms of a proposed rule setting standards and practices for the conduct of all appropriate inquiries. The committee was composed of 25 members and each member of the committee represented a specific stakeholder interest. EPA had one seat on the committee. The Agency member on the committee represented the Federal government's own set of interests. A neutral facilitator assisted the Negotiated Rulemaking Committee by applying proven consensus building techniques to the Committee's activities. This facilitator served several roles including convening the process, facilitating meeting discussions, and mediating Committee negotiations.

The Agency's negotiated rulemaking committee for this proposed rule was formed and operated in full compliance with the requirements of the Federal Advisory Committee Act (FACA) and in a manner consistent with the requirements for the Negotiated Rulemaking Act of 1990. Committee members established formal ground rules for the conduct of their negotiations. Among other things, the ground rules provide that Committee decisions would be made by consensus, Committee agreements would be tentative until the Committee reached final consensus on regulatory language, and Committee members could not withdraw their consensus once a final consensus was reached by the Committee. All meetings of the Negotiated Rulemaking Committee were open public meetings. Members of the public, including representatives from organizations not represented on the Committee were welcomed to observe Committee discussions during each meeting. All written products developed by the Committee were made available to the public on EPA's Web site and in the Agency's rulemaking docket. Time was set aside during each meeting of the Committee to hear comments from the public. Members of the public also had the opportunity to provide written comments to the negotiated rulemaking committee on the topics considered and discussed by the Committee. The openness of the negotiated rulemaking process allowed for continued review of the Committee proceedings by the public and allowed the Committee to give full consideration to input offered by the public during its deliberations.

The Negotiated Rulemaking Committee for All Appropriate Inquiries conducted six multiple-day meetings over the course of an eight-month period, beginning in April 2003. The Committee reached consensus on the provisions of a proposed rule during its meeting in November 2003. The consensus of all Committee members was confirmed in December 2003 through approval of the facilitator's summary of that meeting, including the text of the proposed rule. The Agency, consistent with the intent of the Negotiated Rulemaking Act of 1990 and in compliance with the Committee's ground rules, is using the Committee's consensus regulatory language as the basis of today's proposed rule.

*I. What Are the Benefits of Negotiated Rulemaking?*

The regulatory negotiation process allowed EPA to solicit direct input from informed, interested, and affected parties while drafting the regulation, rather than delay public input until the public comment period provided after publishing a proposed rule; therefore, ensuring that the rule is sensitive to the needs and limitations of both the parties and the Agency. A rule drafted by negotiation with informed and affected parties is expected to be grounded in the practical experiences of the experts on the committee and more easily implemented, thereby providing the public with the benefits of the rule while minimizing the negative impact of a regulation conceived or drafted without the direct input of outside knowledgeable parties. Since a negotiating committee includes representatives from the major stakeholder groups affected by or interested in the rule, the number of public comments on the proposed rule may be reduced and those comments that are received may be more moderate.

Under a traditional rulemaking process, EPA develops a proposed rulemaking using Agency staff and consultant resources. The concerns of affected parties are made known through various informal contacts and through publication of advance notices of proposed rulemaking in the **Federal Register**. After the notice of proposed rulemaking is published for comment, affected parties may submit arguments and data defining and supporting their positions with regard to the issues raised in the proposed rule. All communications from affected parties are directed to the Agency. In general, there is not much communication among parties representing different interests. Many times, effective regulations have resulted from such a process. However, as Congress noted in the Negotiated Rulemaking Act of 1990, such regulatory development procedures ''may discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions and to engage in expensive and time-consuming litigation * * * '' (5 U.S.C. 581(2), Pub. L. 101–648). Congress also stated that ''adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.'' (*Id* at 5 U.S.C. 581(3)). In the case of today's proposed rule, EPA believes that the willingness of the stakeholders to participate in the negotiated rulemaking greatly benefitted the development of the proposed rule.

*J. Who Was Represented on the Negotiated Rulemaking Committee?*

The Agency initiated the negotiated rulemaking process giving particular attention to ensuring full and adequate representation of those interests that may be significantly affected by the proposed rule setting standards for conducting all appropriate inquiries. The Negotiated Rulemaking Act defines the term ''interest'' as ''with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner'' (5 U.S.C. 562(5)). Listed below are parties that the Agency identified as being ''significantly affected'' by the matters that may be included in the proposed rule. The Negotiated Rulemaking Committee consisted of representatives from each of these stakeholder groups.

The Negotiated Rulemaking Committee was composed of 25 members representing parties of interest to the rulemaking. EPA monitored the membership of the Committee carefully to ensure that there was a balanced representation from affected and interested stakeholder groups. The Negotiated Rulemaking Committee included representatives from the following stakeholder groups:

- Environmental Interest Groups
- Environment Justice Community
- Federal Government
- Tribal Governments
- State Governments
- Local Governments
- Real Estate Developers
- Bankers and Lenders
- Environmental Professionals

After establishing the above list of stakeholders as the stakeholders representing significant interests in the rulemaking, EPA identified specific organizations that the Agency believed could speak for and represent these

interests. After identifying a preliminary list of organizations to invite to participate in the negotiated rulemaking process, publishing the preliminary list in the **Federal Register** in a *Notice of Intent To Negotiate* (68 FR 10675), and considering public comment on the list of organizations invited to represent each stakeholder group, including considering self-nominations received from commenters, the Negotiated Rulemaking Committee was formed. The Committee included individuals from the following organizations:

- U.S. Environmental Protection Agency
- Environmental Defense
- Center for Public Environmental Oversight
- Partnership for Sustainable Brownfields Redevelopment
- West Harlem Environmental Action
- U.S. Public Interest Research Group (U.S. PIRG) [1]
- Association of State and Territorial Solid Waste Management Officials
- Gila River Indian Tribe
- Cherokee Nation
- U.S. Conference of Mayors
- National Association of Local Government Environmental Professionals
- International Municipal Lawyers Association
- National Association of Development Organizations
- National Association of Homebuilders
- The Real Estate Roundtable
- National Association of Industrial and Office Properties
- International Council of Shopping Centers
- Trust for Public Land
- National Brownfields Association
- Mortgage Bankers Association
- Environmental Bankers Association
- National Ground Water Association
- American Society of Civil Engineers
- ASFE
- Wasatch Environmental, Inc.

The docket for today's rulemaking includes a list of the individuals that represented each of these organizations on the Negotiated Rulemaking Committee. Also included in the docket are the meeting summaries for each meeting of the Committee and the Committee's final report.

[1] EPA notes that after all members of the Negotiated Rulemaking Committee reached consensus on November 14, 2003 and such consensus was confirmed by all Committee members through approval of the final meeting summary, U.S. PIRG submitted a letter, dated December 19, 2003, seeking to withdraw from the Committee. EPA included the letter and its reply in the public docket for the negotiated rulemaking process, SFUND–2003–0006.

## III. Detailed Description of Today's Proposed Rule

### *A. What Is the Purpose and Scope of the Proposed Rule?*

As outlined in the Brownfields Amendments to CERCLA, the purpose of today's rule is to establish federal standards and practices for the conduct of all appropriate inquiries. Such inquiries must be conducted by persons seeking any of the landowner liability protections under CERCLA prior to acquiring a property (as outlined in Section II.B. of this preamble). In addition, persons receiving Federal brownfields grants under the authorities of CERCLA Section 104(k)(2)(B) to conduct site characterizations and assessments must conduct such activities in compliance with the all appropriate inquiries regulations.

In the case of persons claiming one of the CERCLA landowner liability protections, the scope of today's proposed rule includes the conduct of all appropriate inquiries for the purpose of identifying releases and threatened releases of hazardous substances on, at, in or to the property that would be the subject of a response action for which a liability protection would be needed and such a property is owned by the person asserting protection from liability. CERCLA liability is limited to releases and threatened releases of hazardous substances which cause the incurrence of response costs. Therefore, in the case of all appropriate inquiries conducted for the purpose of qualifying for protection from CERCLA liability (CERCLA Section 107), the scope of the inquiries is to identify releases and threatened releases of hazardous substances which cause or threaten to cause the incurrence of response costs.

In the case of persons receiving Federal brownfields grants to conduct site characterizations and assessments, the scope of the proposed all appropriate inquiries standards and practices may be broader. The Brownfields Amendments include a definition of a ''brownfield site'' that includes properties contaminated or potentially contaminated with pollutants and contaminants not included in the definition of ''hazardous substance'' in CERCLA Section 101(14). Brownfields sites include properties contaminated with (or potentially contaminated with) hazardous substances, as well as petroleum and petroleum substances, controlled substances, and pollutants and contaminants (as defined in CERCLA Section 101(33)). Therefore, in the case of persons receiving federal brownfields grant monies to conduct site assessment and characterization activities at brownfields sites, the scope of the all appropriate inquiries may include these other pollutants and contaminants, as outlined in proposed § 312.1(c)(2), to ensure that persons receiving brownfields grants can appropriately and fully assess the properties that are owned by grant recipients to the full extent provided by the law. It is not the case that every recipient of a brownfields assessment grant has to include within the scope of the all appropriate inquiries petroleum and petroleum products, controlled substances and CERCLA pollutants and contaminants (as defined in CERCLA Section 101(33)). However, in those cases where the terms and conditions of the grant or the cooperative agreement with the grantee designate a broader scope to the investigation (beyond CERCLA hazardous substances), then the scope of the all appropriate inquiries should include the additional substances or contaminants.

The scope of today's proposed rule does not include property purchased by a non-governmental entity or non-commercial entity for ''residential or other similar uses where a facility inspection and title search reveal no basis for further investigation.'' (Pub. Law 107–118 at Sec. 223). CERCLA Section 101(35)(B)(v) states that in those cases, the title search and facility inspection shall be considered to satisfy the requirements for all appropriate inquiries.

EPA notes that today's proposed rule also does not affect the existing CERCLA liability protections for state and local governments that acquire ownership to properties involuntarily in their functions as sovereigns, pursuant to CERCLA Sections 101(20)(D) and 101(35)(A)(ii). Involuntary acquisition of properties by state and local governments fall under those CERCLA provisions and EPA's policy guidance on those provisions, not under the all appropriate inquiry provisions of CERCLA Section 101(35)(B).

### *B. To Whom Is the Rule Applicable?*

Today's proposed rule applies to any person who may seek the landowner liability protections of CERCLA as an innocent landowner, contiguous property owner, or bona fide prospective purchaser. The statutory requirements to obtain each of these landowner liability protections include the conduct of all appropriate inquiries. In addition, the proposed rule will apply to individuals receiving Federal grant monies under CERCLA Section 104(k)(2) to conduct site characterization and assessment

activities. Persons receiving such grant monies must conduct the site characterization and assessment in compliance with the all appropriate inquiries regulatory requirements.

*C. Does the Proposed Rule Include Any New Reporting or Disclosure Obligations?*

The proposed rule does not include any new reporting or disclosure obligations. The proposed rule only would apply to those property owners who may seek the landowner liability protections provided under CERCLA for innocent landowners, contiguous property owners or bona fide prospective purchasers. The documentation requirements included in this proposed rule are primarily intended to enhance the inquiries by requiring the environmental professional to record the results of the inquiries and his or her conclusions regarding conditions indicative of releases and threatened releases on, at, in, or to the property and to provide a record of the environmental professional's inquiry. There are no proposed requirements to notify or submit information to EPA or any other government entity.

The proposed rule does require, in proposed § 312.21(c), that the environmental professional on behalf of the property owner document the results of the all appropriate inquiries in a written report. The property owner may use this report to document the results of the inquiries. The Agency believes that such a report can be similar in nature to the type of report currently provided under generally accepted commercial practices. Today's proposed rule contains no requirements regarding the length, structure, or specific format of the written report. In addition, the proposed rule does not require that a written report of any kind be submitted to EPA or any other government agency, or that a written report be maintained on-site at the subject property for any length of time. The purpose of the written report is merely to ensure that any person claiming one of the CERCLA landowner liability protections be able to show documentation that all appropriate inquiries were conducted in compliance with the federal regulations, should such documentation be required.[2] The Agency notes, that while this proposed regulation would not require parties conducting all appropriate inquiries to retain the written report or any other documentation discovered, consulted, or created in the course of conducting the inquiries, the retention of such documentation and records may be helpful should the property owner need to assert protection from CERCLA liability after purchasing a property.

The proposed rule would require that a written report documenting the results of the all appropriate inquiries include an opinion of an environmental professional as to whether the all appropriate inquiries conducted identified conditions indicative of releases or threatened releases of hazardous substances on, at, in or to the subject property. The proposed rule also would require that the report identify data gaps in the information collected that affect the ability of the environmental professional to render such an opinion or determine the significance of data gaps.

The proposed rule, at proposed § 312.21(d), would require that the environmental professional who conducts or oversees the all appropriate inquiries sign the written report. There are two purposes for the proposed requirement to include a signature in the report. First, the individual signing the report would declare, on the signature page, that he or she meets the definition of an environmental professional, as provided in proposed § 312.10. In addition, the proposed rule would require the environmental professional to declare that: [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.

The Negotiated Rulemaking Committee considered requiring an environmental professional to ''certify'' the results of the all appropriate inquiries when signing the report. However, several members of the Committee, members of the public representing organizations of environmental insurance companies, and professional engineers and environmental scientists, pointed out that requiring the report to include a certification statement could imply a warranty or guarantee of the report results on the part of the environment professional. This in turn could have implications regarding the availability and costs of professional insurance for environmental professionals. Requiring a certification as part of the all appropriate inquiries report also could cause a conflict with current requirements governing the use of professional stamps held by individuals with professional licenses, such as those for professional engineers, issued by states, tribes, and the federal government. To avoid such implications, the proposed rule does not include a certification requirement. However, the proposed rule would require that each all appropriate inquiries report include a signature of the environmental professional as well as two statements above the signature. One statement would read ''[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in § 312.21 of 40 CFR part 312.'' The proposal also includes a second statement to be included above the signature, stating: ''[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR part 312.'' These statements are meant to document that an individual meeting the proposed qualifications of an environmental professional was involved in the conduct of the all appropriate inquiries and that the activities performed by, or under the supervision or responsible charge of, the environmental professional were performed in conformance with the proposed regulations.

The proposed rule allows for the property owner and any environmental professional engaged in the conduct of all appropriate inquiries for a specific property to design and develop the format and content of a written report that will meet the prospective purchaser's objectives and information needs in addition to providing documentation that all appropriate inquiries were completed prior to the acquisition of the property, should the landowner need to assert protection from liability after purchasing a property.

The Agency requests comment on the proposed requirements for an all appropriate inquiries report. The Agency also requests comments on the signature requirements for the all appropriate inquiries report.

Although today's proposed rule does not include any additional disclosure requirements, CERCLA Section 103 does require persons in charge of facilities, including on-shore and off-shore facilities, and persons in charge of vessels to notify the National Response Center of any release of a hazardous substance of a quantity equal to or greater than a ''reportable quantity,'' as

[2] Nothing in this proposed regulation or preamble is intended to suggest that any documentation prepared in conducting all appropriate inquiries will be admissible in court in any litigation where a party raises one of the liability protections, or will in any way alter the judicial rules of evidence.

defined in CERCLA Section 102(b) from the facility or vessel. Today's proposed rule proposes no changes to this reporting requirement and proposes no changes to any other reporting or disclosure requirements under federal, tribal, or state law.

*D. What Are the Proposed Qualifications for an Environmental Professional?*

1. What Is the Intent of the Proposed Definition of an Environmental Professional?

In the Brownfields Amendments, Congress required that all appropriate inquiries include ''the results of an inquiry by an environmental professional'' (CERCLA Section 101(35)(B)(iii)(I)). The members of the Negotiated Rulemaking Committee determined that it is necessary to establish minimum qualifications for persons managing or overseeing all appropriate inquiries. The Committee's intent, in setting minimum professional qualifications, is to ensure that all inquiries are conducted at a high level of professional ability and ensure the overall quality of both the inquiries conducted and the conclusions or opinions rendered with regard to conditions indicative of the presence of a release or threatened release on, at, in, or to a property, based upon the results of all inquiries. The Committee agreed that an environmental professional conducting or overseeing all appropriate inquiries must possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases of hazardous substances to the surface or subsurface of a property. The Committee agreed that an environmental professional must hold a degree in an engineering or scientific field of study and that such individuals also must have a number of years of relevant experience in conducting all appropriate inquiries, or environmental site assessments. The Committee determined that any individual overseeing the conduct of all appropriate inquiries must provide significant information about the environmental conditions at a property to support a purchaser's or property owner's claim with regard to liability protection under CERCLA. Therefore, any individual overseeing the conduct of the all appropriate inquiries must have a significant level of education and experience. In addition, the Committee determined that it is essential for environmental professionals to remain current in their field of practice.

2. What Are the Minimum Qualifications for Meeting the Definition of an Environmental Professional?

Today's proposed rule includes a definition of an environmental professional that reflects the Negotiated Rulemaking Committee's extensive efforts to identify a set of minimum qualifications, including minimum levels of education and experience, that characterize the type of professional who is best qualified to oversee and direct the development of comprehensive inquiries and provide the landowner with sound conclusions and opinions regarding the potential for releases or threatened releases to be present at the property. The proposed rule allows for individuals not meeting the proposed definition of an environmental professional to contribute to and participate in the all appropriate inquiries on the condition that such individuals are conducting inquiries activities under the supervision or responsible charge of an individual that meets the regulatory definition of an environmental professional.

The proposed rule would require that the final review of the all appropriate inquiries and the conclusions that follow from the inquiries rest with an individual who qualifies as an environmental professional, as defined in proposed section § 312.10 of the proposed rule. The Negotiated Rulemaking Committee concluded, as reflected in its final consensus document, that it is essential that a person meeting the regulatory definition of an environmental professional sign a report documenting the results and conclusions of the all appropriate inquiries to attest to his or her opinion that the inquiries were conducted in compliance with the regulations. The proposed rule also provides that in signing the report, the environmental professional must document that he or she meets the definition of an ''environmental professional'' included in the regulations.

The proposed definition of an environmental professional includes minimum educational qualifications and a number of years of full-time relevant experience in the conduct of all appropriate inquiries or environmental site assessments. The proposed definition first and foremost requires that to qualify as an environmental professional a person must ''possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases * * * to the surface or subsurface of a property, sufficient to meet the objectives and performance factors'' that are provided in the proposed regulation. The proposed definition of an environmental professional includes individuals who possess the following combinations of education and experience.

- Hold a current Professional Engineer's or Professional Geologist's license or registration from a state, tribe, or U.S. territory and have the equivalent of three (3) years of full-time relevant experience; or
- Be licensed or certified by the federal government, a state, tribe, or U.S. territory to perform environmental inquiries as defined in § 312.21 and have the equivalent of three (3) years of full-time relevant experience; or
- Have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and the equivalent of five (5) years of full-time relevant experience; or
- As of the date of the promulgation of the final rule, have a Baccalaureate or higher degree from an accredited institution of higher education and the equivalent of ten (10) years of full-time relevant experience.

Based upon the recommendations of the Negotiated Rulemaking Committee, EPA is proposing to recognize as environmental professionals those individuals who are licensed by any tribal or state government as a professional engineer (P.E.) or a professional geologist (P.G.), and have three years of full-time relevant experience in conducting all appropriate inquiries. The Agency believes that such individuals have ''sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases * * * to the surface or subsurface of a property, sufficient to meet the objectives and performance factors'' provided in the proposed regulation. EPA and the Committee concluded that the rigor of the tribal- and state-licensed P.E. and P.G. certification processes, including the educational and training requirements, as well as the examination requirements, paired with the requirement to have three years of relevant professional experience conducting all appropriate inquiries will ensure that all appropriate inquiries

are conducted under the supervision or responsible charge of an individual well qualified to oversee the collection and interpretation of site-specific information and render informed opinions and conclusions regarding the environmental conditions at a property, including opinions and conclusions regarding the presence of releases or threatened releases of hazardous substances and other contaminants on, at, in, or to the property. The Agency's decision to recognize tribal and state-licensed P.E.s and P.G.s reflects the fact that tribal governments and state legislatures hold such professionals responsible (legally and ethically) for safeguarding public safety, public health, and the environment. To become a P.E. or P.G. requires that an applicant have a combination of accredited college education followed by approved professional training and experience. Once a publicly-appointed review board approves a candidate's credentials, the candidate is permitted to take a rigorous exam. The candidate must pass the examination to earn a license, and perform ethically to maintain it. After a state or tribe grants a license to an individual, and as a condition of maintaining the license, many states require P.E.s and P.G.s to maintain proficiency by participating in approved continuing education and professional development programs. In addition, members of the Negotiated Rulemaking Committee, including state representatives on the Committee, pointed out that tribal and state licensing boards can investigate complaints of negligence or incompetence on the part of licensed professionals, and may impose fines and other disciplinary actions such as cease and desist orders or license revocation.

The Negotiated Rulemaking Committee also recommended, and EPA is proposing, to include within the proposed definition of an environmental professional individuals who are environmental professionals, or otherwise licensed to perform environmental site assessments or all appropriate inquiries by the Federal government (*e.g.*, the Bureau of Indian Affairs) or under a state or tribal certification program, provided that these individuals also have three years of relevant experience. It is the Committee's and EPA's opinion that such qualifications define individuals who ''possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases * * * to the surface or subsurface of a property, sufficient to meet the [proposed rule's] objectives and performance factors.''

Although the proposed rule recognizes tribal and state-licensed P.E. and P.G.s and other such government licensed environmental professionals with three years of experience to be environmental professionals, the proposed rule does not restrict the definition of an environmental professional to these licensed individuals. The proposed definition of an environmental professional also would include individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and have the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments, or all appropriate inquiries. Again, such individuals most likely will possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property, sufficient to meet the proposed objectives and performance factors included in proposed § 312.20(d) and (e).

A goal of the Negotiated Rulemaking Committee was to establish qualifications for the environmental professional that will ensure that all appropriate inquiries are conducted at a high standard of technical and scientific quality, while not significantly disrupting the current market for professional site assessment services. The Committee debated whether or not to recommend that the definition of an environmental professional be restricted to individuals holding a Professional Engineer or Professional Geologist license, or holding another similar license from a state, tribe, or U.S. territory. Establishing such a requirement could assure that all appropriate inquiries conducted for the purposes of supporting a claim to a CERCLA liability protection would be conducted by highly qualified individuals. However, Committee members recognized that many individuals with appropriate education and training and many years of relevant experience in conducting environmental site assessments (including non-licensed environmental engineers and geologists) may be qualified to conduct all appropriate inquiries, although they do not have a Professional Engineer or Professional Geologist license. The Committee therefore discussed what qualifications are necessary to ensure that an individual is qualified to oversee the conduct of all appropriate inquiries, review the results of all inquiries for a particular property and be capable of assessing this information in light of all other relevant site-specific information about a property (*e.g.*, hydrogeologic setting), and develop sound opinions and conclusions regarding the environmental conditions at a property and the potential presence of a release or threatened release on, at, in or to the property. The Committee determined that the individuals best qualified to review all available and relevant information about a property and render a professional opinion regarding the environmental conditions at a property at a standard of quality necessary that may ensure a valid interpretation of the findings and accurate opinion of the property's environmental conditions, are those with a degree in a relevant field of engineering, environmental science, or earth science and five years of full-time relevant experience. The Committee considered many other variants of educational and experience qualifications. Some Committee members preferred proposing qualifications centered more closely around specific education or training criteria. Other Committee members pointed out that the qualifications should be based primarily on years of relevant experience. After much deliberation and after receiving and considering public comments on the subject, the Committee recommended that the proposed definition of an environmental professional include both educational and experience qualifications. The Committee recommended that the definition of an environmental professional include a requirement that such individuals hold a Baccalaureate or higher degree in a relevant field of science or engineering. Committee members believed that individuals trained in science and engineering are best qualified to understand how to interpret information collected about a property in light of the environmental conditions and site-specific situations at the property. In addition, the Committee determined that individuals with such degrees also should have five years of relevant full-time experience in conducting all appropriate inquiries prior to meeting the qualifications for an environmental professional. The proposed rule also would require all environmental professionals to remain current in the field of all appropriate inquiries, or environmental site assessments.

During the Committee's deliberations on the definition of an environmental professional, public commenters raised particular concerns with regard to individuals who currently are employed in the business of conducting all appropriate inquiries or environmental site assessments, but who do not meet the Committee's proposed qualifications of an environmental professional. The Committee gave careful consideration of public comments that pointed out the potential impacts that the proposed definition of an environmental professional may have on the current market for environmental site assessment services and the fact that many practicing professionals without science degrees have substantial investigative and writing skills. Members of the public pointed out in written comments to EPA and the Committee that some practicing professionals have many years of experience in conducting all appropriate inquiries, but do not have the specific educational requirements recommended by the Committee. EPA and the Committee, in considering these comments, wanted to ensure that professionals with extensive experience in conducting all appropriate inquiries and who have built their careers in such a business practice not be put out of business or bear a hardship of having to obtain a degree mid-career. However, EPA and the Committee had to balance this concern with the additional concerns of ensuring that all appropriate inquiries are conducted by experienced and well-qualified professionals.

The Committee deliberated the merits of setting a high standard of excellence for the conduct of all appropriate inquiries through the establishment of stringent qualifications for environmental professionals against the need to ensure that competent individuals currently conducting all appropriate inquiries are not displaced. After carefully considering these issues, the Committee recommended and EPA is proposing, as part of the proposed definition of an environmental professional, a provision allowing many currently practicing professionals to continue to conduct business in the field of environmental site assessments or all appropriate inquiries, while ensuring a high qualifications standard for future professionals. The Negotiated Rulemaking Committee recommended that the proposed definition of an environmental professional allow for persons that at the time of promulgation of the final rule do not meet the proposed educational or professional licensing qualifications for an environmental professional but have more than ten years of experience in conducting environmental site assessments to be included as environmental professionals. This provision is proposed as a ''grandfather'' clause and would only apply to those individuals with ten or more years of experience in the field of all appropriate inquiries investigations on the date of promulgation of the final rule. The Committee made this recommendation after careful consideration of public comments and of the potential impacts that the proposed definition of an environmental professional may have on the current market for environmental site assessment services and the fact that many practicing professionals without science degrees have substantial investigative and writing skills.

The proposed definition provides that ''as of the date of promulgation of the final rule, individuals who have a baccalaureate or higher degree from an accredited institution of higher education and the equivalent of ten (10) years of full-time relevant experience'' will meet the proposed definition of an environmental professional. Again, this provision of the proposed definition is a grandfather clause and would apply only to those individuals meeting these qualifications on the date of promulgation of the final rule. Persons not meeting these qualifications on the effective date of the final rule will have to meet the other minimum qualifications included in the proposed definition to qualify as an environmental professional for the purpose of conducting all appropriate inquiries under the federal standards established under the final rule.

EPA is requesting comment on the proposed definition of an environmental professional and the specific minimal qualifications included in the proposed definition.

3. If I Am Certified as an Environmental Professional by a Private Certification Association, Do I Qualify as an Environmental Professional Under the Proposed Rule?

During the Negotiated Rulemaking Committee's deliberations, the general public had many opportunities to comment on the Committee's draft regulatory language including the opportunity to provide written comment to the Committee and make oral presentations to the Committee during each of the Committee's meetings. Many individuals took advantage of the openness of the negotiated rulemaking process to provide input and comment to the Committee, particularly with regard to the Committee's deliberations on the definition of an environmental professional. The Committee considered restricting the definition of an environmental professional to state-licensed certification programs. However, based upon many comments received from the public, as well as the concerns of some members of the Committee, the Committee members concluded that there is a need to recognize individuals who have similar qualifications to P.E.s and P.G.s but do not hold a state-issued license or certificate. Therefore, the Committee recommended, and EPA is proposing, to include within the definition of an environmental professional those individuals who have a baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and the equivalent of five (5) years of full-time relevant experience in conducting environmental site assessments or all appropriate inquiries. The proposed definition of ''relevant experience'' is ''participation in the performance of environmental site assessments that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases * * * to the subject property.''

The Committee received comments from independent professional certification organizations, including the Certified Hazardous Materials Managers' organization, requesting that their organizations' certification programs be named in the proposed regulatory definition of an environmental professional. The Committee concluded that such an approach would require that EPA review the certification requirements of each organization to determine whether or not each organization's certification requirements meet or exceed the regulatory qualifications proposed for an environmental professional. Given that there may be many such organizations and given that each organization may review and change its certification qualifications on a frequent or periodic basis, EPA concluded that such a undertaking was not practicable. The Agency does not have the necessary resources to review the legitimacy of each private certification organization and review and approve each organization's certification

qualifications. Therefore, the Committee recommended, and EPA is proposing, to include within the regulatory definition of an environmental professional, a generic performance-based qualifications standard that includes education and experience qualifications, but does not recognize any private organization's certification program. However, the Agency notes that any individual with a certification from a private certification organization where the organization's certification qualifications include the same or more stringent education and experience requirements as those included in the federal regulation will meet the definition of an environmental professional for the purposes of this regulation. As stated above, the proposed definition of an environmental professional includes individuals who hold a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and the equivalent of five (5) years of full-time relevant experience.

4. Can Persons Not Meeting the Proposed Definition of an Environmental Professional Contribute to the Conduct of All Appropriate Inquiries?

During the Committee's deliberations on the definition of an environmental professional, members of the public also raised concerns about restricting the conduct of all appropriate inquiries to only those individuals meeting the definition of an environmental professional. The Negotiated Rulemaking Committee considered requiring that all the activities necessary to complete the all appropriate inquiries investigation be conducted by persons meeting the proposed definition of an environmental professional. Such a requirement could ensure that all of the required activities are conducted at a high standard of quality. In addition, requiring that all activities be conducted by an environmental professional could ensure, to a high level of confidence, the accuracy and reliability of the environmental professional's interpretation of the inquiries results. However, after careful review of specific activities required to complete the all appropriate inquiries, consideration of public comments offered during the Committee's deliberations, and consideration of the costs and impacts to the market for environmental site assessment services, the Committee decided that it is not necessary for an environmental professional to perform all aspects of the all appropriate inquiries.

Therefore, the proposed definition of an environmental professional would allow for many of the individual inquiry activities to be conducted by individuals that may not qualify as an environmental professional per the proposed definition. The proposed rule would allow individuals not meeting the definition of an environmental professional to contribute to the conduct of the all appropriate inquiries, as long as such individuals are working under the supervision or responsible charge of an individual who meets the proposed definition of an environmental professional. This provision would allow for a team of individuals working for the same firm or organization (*e.g.*, individuals working for the same government agency) to share the workload for conducting all appropriate inquiries for a single property, provided that one member of the team meets the proposed definition of an environmental professional and reviews the results and conclusions of the inquiries and signs the final report.

The Agency requests comments on all of the proposed qualifications included in the definition of an environmental professional and the provisions allowing for individuals who do not qualify as environmental professionals to contribute to inquiry activities.

*E. References*

Today's proposed rule includes no references. However, the Agency is reserving a reference section and may include references in the final rule. As explained later in this preamble, EPA is inviting the public to identify potentially applicable standards developed by standards developing organizations that may be applicable and compliant with the regulations proposed today. Prior to promulgating a final regulation setting federal standards and practices for all appropriate inquiries, the Agency may consider citing or referencing applicable and compliant voluntary consensus standards in the final regulation. This may facilitate implementation of the final regulations and avoid disruption to parties using voluntary consensus standards that are found to be fully compliant with the federal regulations.

*F. What Is Included in "All Appropriate Inquiries?"*

The proposed Federal regulations for conducting all appropriate inquiries include standards and practices for conducting the activities included in each of the statutory criterion established by Congress in the Brownfields Amendments. These criteria are set forth in CERCLA Section 101(35)(2)(B)(iii) and are:

- The results of an inquiry by an environmental professional (proposed § 312.21).
- Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility (proposed § 312.23).
- Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed (proposed § 312.24).
- Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law (proposed § 312.25).
- Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility (proposed § 312.26).
- Visual inspections of the facility and of adjoining properties (proposed § 312.27).
- Specialized knowledge or experience on the part of the defendant (proposed § 312.28).
- The relationship of the purchase price to the value of the property, if the property was not contaminated (proposed § 312.29).
- Commonly known or reasonably ascertainable information about the property (proposed § 312.30).
- The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation (proposed § 312.31).

1. Who Is Responsible for Conducting the All Appropriate Inquiries?

The Brownfields Amendments to CERCLA require persons claiming any of the landowner liability protections to conduct all appropriate inquiries into the past uses and ownership of subject property. The criteria included in the Brownfields Amendments for the regulatory standards for all appropriate inquiries require that the inquiries include an inquiry by an environmental professional. The statute does not require that all criteria or inquiries be conducted by an environmental professional. After careful review and consideration of each statutory criterion,

the Negotiated Rulemaking Committee determined that many, but not all, of the inquiries activities must be conducted by, or under the supervision or responsible charge of, an individual meeting the qualifications within the proposed definition of an environmental professional.

The Committee recommended, and EPA is proposing, that several of the activities included in the inquiries may be conducted either by the purchaser, or the landowner, and do not have to be conducted under the supervision or responsible charge of the environmental professional. The proposed rule would require that the results of all activities not conducted by or under the supervision or responsible charge of the environmental professional be provided to the environmental professional to ensure that such information may be fully considered when the environmental professional draws conclusions based on the inquiry activities or renders an opinion as to whether conditions at the property are indicative of a release or threatened release of a hazardous substance (or other contaminant) on, at, in, or to the property which causes the incurrence of response costs.

The proposed rule allows for the following activities to be the responsibility of, or conducted by, the purchaser or landowner and not necessarily by the environmental professional, provided the results of such inquiries or activities are provided to an environmental professional overseeing the all appropriate inquiries:

- Searches for environmental cleanup liens against the subject property that are filed or recorded under federal, tribal, state, or local law, as required by proposed § 312.25.
- Assessments of any specialized knowledge or experience on the part of the purchaser or landowner, as required by § 312.28.
- An assessment of the relationship of the purchase price to the fair market value of the subject property, if the property was not contaminated, as required by § 312.29.
- An assessment of commonly known or reasonably ascertainable information about the subject property, as required by § 312.30.

The proposed rule would require that all other required inquiries and activities, beyond those listed above to be conducted by, or under the supervision or responsible charge of, an environmental professional. The Agency requests comment on the proposed division of responsibilities.

2. When Must All Appropriate Inquiries Be Conducted?

CERCLA, as amended, requires innocent landowners, bona fide prospective purchasers, and contiguous property owners to conduct all appropriate inquiries prior to acquiring a property for the purposes of either establishing that the purchaser ''did not know and had no reason to know'' of releases or threatened releases of hazardous substances on, at, in, or to the property, or in the case of the bona fide prospective purchaser, to identify environmental conditions indicative of releases or threatened releases at the property prior to taking ownership of the property. In the case of contiguous property owners, CERCLA Section 107(q)(1)(A)(viii) requires that a person claiming to be a contiguous property owner conduct all appropriate inquiries ''at the time at which the person acquired the property.'' In the case of innocent landowners, Section 101(35)(B) of CERCLA requires that the property owner conduct all appropriate inquiries ''on or before the date on which the defendant acquired the facility.''

Other than to specify that all appropriate inquiries must be conducted at or prior to the time a person acquires a property, the statute is silent regarding how close to the actual purchase date the inquiries must be completed. The proposed rule requires that all appropriate inquiries be conducted within one year prior to taking title to a property. As explained below, purchasers may use information collected as part of previous inquiries for the same property, if the inquiries were completed or updated within one year prior to the date the property is acquired. The proposed rule would require that certain information collected as part of the all appropriate inquiries be updated if it was collected more than 180 days prior to the date a purchaser acquires the property. In addition, the Agency is proposing to define the date of acquisition of a property as the date on which the purchaser acquires title to the property.

The Agency believes that the event that most closely reflects the Congressional intent of the date on which the defendant acquired the property is the date on which a purchaser received title to the property. The Agency considered other dates, such as the date a prospective purchaser signs a purchase or sale agreement. However, EPA believes that it could be burdensome to require a prospective purchaser to have completed the all appropriate inquiries prior to having an agreement with a seller to complete a sales transaction. In fact, the time period between the date on which a sales agreement is signed and the date on which the title to the property is actually transferred to the purchaser may be the most convenient time for the prospective purchaser to obtain access to the property and undertake the all appropriate inquiries. In addition, requiring that all appropriate inquiries be completed on some date prior to the date of title transfer could result in requiring prospective purchasers to undertake all appropriate inquiries so early in the property acquisition process as to require the inquiries to be completed prior to the purchaser making a final decision on whether to actually acquire the property. EPA requests comment on the proposal to establish the date on which title is transferred as the date on which the property is acquired.

To increase the potential that the information collected for the all appropriate inquiries accurately reflects the proposed objectives and performance factors, as well as to increase the potential that opinions and judgments regarding the environmental conditions at a property that are included in an all appropriate inquiries report are based on current and relevant information, the Agency is proposing that all appropriate inquiries be conducted within one year prior to the purchaser acquiring the property. Such inquiries may include information collected for previous all appropriate inquiries that were conducted or updated within one year prior to the acquisition date of the property. In addition, as explained in more detail below, the proposed rule would require that several of the components of the inquiries be updated within 180 days prior to the date the property is acquired (*i.e.*, the date the landowner obtains title to the property).

3. Can a Purchaser Use Information Collected for Previous Inquiries Completed for the Same Property?

The proposed rule, at § 312.20(b), would allow parties conducting all appropriate inquiries to use previous inquiries completed for the same property, under certain conditions. First, the previous inquiries must have been conducted in compliance with the regulations applicable at the time the previous all appropriate inquiries investigation was completed. In addition, the previous inquiries must have been completed with information that was collected or updated no longer than a year prior to the current acquisition date for the property.

Certain types of information collected more than 180 days prior to the current date of acquisition must be updated for the current all appropriate inquiries. Also, the information required under some specific criterion (*e.g.*, relationship of purchase price to property value, specialized knowledge on part of defendant) must be collected specifically for the current transaction.

When discussing the issue of whether or not to provide for the use of all appropriate inquiries conducted by a previous owner, or the seller, of a particular property, the Negotiated Rulemaking Committee recognized that there is value in using previously collected information when such information was collected in accordance with the regulatory standards, particularly when the use of such previously-collected information will reduce the need to undertake duplicative efforts. In its deliberations, the Committee discussed the potential impacts that allowing the use of all appropriate inquiries conducted by third parties could have upon the legality and legitimacy of the all appropriate inquiries required to be conducted by a purchaser not involved in the collection of the information. The Committee also discussed how often certain information required to be collected as part of the all appropriate inquiries should be updated to ensure its accuracy. A particular focus of the Committee's discussions was the need for information collected and used by an environmental professional to be accurate and current, therefore allowing the environmental professional to make informed judgments regarding the environmental conditions of the property and provide informed opinions as to the likelihood that conditions are indicative of a release or threatened release of a hazardous substance on, at, in, or to the property.

The Committee recommended, and EPA is proposing, to allow all appropriate inquiries to include information contained in previous inquiries, including inquiries conducted by third parties, for the same property. However, such information must have been updated or collected within one year prior to the date the current purchaser acquires the property (the date on which the owner takes title to the property) and collected in compliance with the regulatory requirements that were in effect at the time the previous all appropriate inquiries were conducted. Note that if the previous all appropriate inquiries were conducted prior to the effective date of the final federal standards for all appropriate inquiries, the inquiries must have been conducted in compliance with either the interim standard established by Congress in the Brownfields Amendments and clarified by EPA on May 9, 2003 (68 FR 24888), or in the case of properties purchased prior to May 31, 1997, in compliance with practices consistent with good commercial or customary business practices.

The Committee recognized that it is not sufficient to wholly adopt previously conducted all appropriate inquiries for the same property without any review. Certain aspects of the all appropriate inquiries investigation are specific to the current purchaser and the current purchase transaction. Therefore, the proposed rule would require that each all appropriate inquiries investigation include current information related to:

- Any relevant specialized knowledge held by the current purchaser and the environmental professional responsible for overseeing and signing the all appropriate inquiries report (*i.e.*, requirements of proposed § 312.28); and
- The relationship of the current purchase price to the value of the property, if the property were not contaminated (*i.e.*, requirements of proposed § 312.29).

In addition, the Committee recommended that certain information be updated if it was not collected within 180 days prior to the date of acquisition of the property (or the date on which the purchaser takes title to the property) to ensure that an all appropriate inquiries investigation accurately reflects the environmental conditions at a property. To increase the potential that information collected is accurate, as well as increase the potential that opinions and judgments regarding the environmental conditions at a property that are included in an all appropriate inquiries report are based on current and relevant information, the proposed rule would require that many of the components of the inquiries be updated within 180 days prior to the date of acquisition of the property. The components of the all appropriate inquiries that must be updated within 180 days prior to the date of acquisition of the property are:

- Interviews with past and present owners, operators, and occupants (proposed § 312.23);
- Searches for recorded environmental cleanup liens (proposed § 312.25);
- Reviews of federal, tribal, state, and local government records (proposed § 312.26);
- Visual inspections of the facility and of adjoining properties (proposed § 312.27); and
- The declaration by the environmental professional (proposed § 312.21(d)).

An all appropriate inquiries investigation may include the information listed above when previously collected by the purchaser or a third party for the same property, provided that the information was collected no longer than one year prior to the current purchaser's date of acquisition of the property and provided that it is updated for the current all appropriate inquiries investigation, if it was collected more than 180 days prior to the acquisition date. Also, in all cases where a purchaser is using previously collected information, the all appropriate inquiries for the current purchase must include a summary of any changes to the conditions of the property that occurred since the previous inquiries were conducted.

The Agency requests comment on the proposed provisions for using previously conducted all appropriate inquiries.

4. Can All Appropriate Inquiries Be Conducted by One Party and Transferred to Another Party?

The proposed rule, at proposed § 312.20(c), allows for all appropriate inquiries to be conducted by one party and transferred to another party, provided that certain conditions are met. It was brought to the attention of the Negotiated Rulemaking Committee that under certain circumstances, the person purchasing a property may obtain a report of all appropriate inquiries conducted for the property from another party, either the seller of the property or another independent party. In particular, the Committee discussed situations where the federal government or a state government agency may conduct the all appropriate inquiries on behalf of the local government on a property being purchased by a local government. For example, the EPA Brownfields program conducts ''targeted brownfields assessments'' on behalf of local governments. This situation also may occur when a state government is covering the cost of the all appropriate inquiries for a property owned by a local government or in a situation where the local government does not have access to appropriate staff or capital resources to conduct the all appropriate inquiries and it therefore is conducted by a state government agency. Another example is when a local government conducts all appropriate inquiries for a

third party in its community, such as a private prospective purchaser. In addition, local brownfields redevelopment agencies that are connected to local government may seek out contaminated property, make all appropriate inquiries about it, acquire it, and then sell the property to a developer.

The proposed rule allows for a person acquiring a property to use the results of inquiries and the inquiries report conducted by another party, if the inquiries and the report meet the proposed objectives and performance factors for the all appropriate inquiries regulations and the purchaser of the property who is seeking to use the previously-collected information or report, reviews all information collected and updates the contents of the report as necessary to accurately reflect current conditions at the property. In addition, the proposed rule would require that the purchaser update the inquiries and the report to include any relevant specialized knowledge held by the current purchaser and the environmental professional. The Agency requests comments on the proposed requirements for using all appropriate inquiries conducted by third parties.

5. What Are the Objectives and Performance Factors for the Proposed All Appropriate Inquiries Requirements?

The Committee developed its recommendation for proposed regulatory language around the criteria established by Congress in Section 101(35)(B)(iii) of CERCLA. As the Committee progressed in its efforts to address each criterion, it became apparent that the purposes and objectives for performing many of the inquiries and the types of information that must be collected to meet the objectives of the individual regulatory criterion often overlapped. For example, in developing standards addressing the criterion requiring a review of historical information, a search for recorded environmental cleanup liens, and a review of government records, the Committee concluded that the objectives of each criterion or activity was similar, and in some cases, the same information could be collected independently to satisfy each criterion when conducting activities required to fulfill each of the criterion's objectives. A chain of title document is historic information that may include information on environmental cleanup liens and may include information on past owners of the property that indicates that previous owners managed hazardous substances at the property.

To avoid requiring duplicative efforts, but to ensure that the proposed regulations include standards and practices that result in a comprehensive assessment of the environmental conditions at a property, the Negotiated Rulemaking Committee recommended, and EPA is proposing, that the all appropriate inquiries standards be structured around a concise set of objectives and performance factors. The proposed objectives and performance factors apply to the inquiries comprehensively. In conducting the inquiries collectively, the landowner and the environmental professional must seek to achieve the proposed objectives and performance factors and use these proposed objectives and standards as guidelines in implementing, in total, all of the other proposed regulatory standards and practices.

An all appropriate inquiries investigation need not address each of the regulatory criterion in any particular sequence. In addition, information relevant to more than one criterion need not be collected twice, and a single source of information may satisfy the requirements of more than one criterion and more than one objective. Under the provisions of the proposed rule, the information required to achieve each of the objectives and performance factors must be met for the all appropriate inquiries investigation to be complete. Although compliance with the all appropriate inquiries requirements ultimately will be determined in a court, the proposed rule allows the purchaser and environmental professional to determine the best process and sequence for collecting and analyzing all required information. For example, it may be appropriate in many situations for the historic records search required by proposed § 312.24 and the search of government records required under proposed § 312.26 be conducted prior to conducting interviews of past and present owners, operators, and occupants, as required under proposed § 312.23. This may allow the purchaser or environmental professional to develop a general understanding of past uses and ownership of a property prior to interviewing owners and occupants and therefore make better use of the interviews to obtain information necessary to meet the performance factors or objectives of the overall investigation when conducting interviews of past and present owners or occupants. In addition, it often may be beneficial to conduct the required interviews of owners, operators and occupants prior to conducting an on-site visual inspection. Information obtained during the interviews may be useful for locating and inspecting potential sources of environmental concerns during the visual inspection.

As stated in proposed § 312.20(d), the all appropriate inquiries standards, as applicable to landowners seeking CERCLA liability protections as innocent landowners, bona fide prospective purchasers, and contiguous landowners, are intended to result in the identification of conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the subject property prior to the acquisition of the property. As established in proposed § 312(d)(2), in the case of persons receiving federal brownfields grant monies under CERCLA Section 104(k) to conduct site characterizations and assessments, the all appropriate inquiries standards are intended to result in the identification of conditions indicative of releases and threatened releases of hazardous substances, as well as pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802) on, at, in, or to the subject property when conducting the assessment or characterization with the use of the grant funds and when the terms and conditions of the grant include such pollutants and contaminants within the scope of the grant. This expanded objective for brownfields grant recipients reflects the broad statutory definition of a ''brownfield site'' that allows EPA to provide grant monies to eligible entities (see CERCLA Section 104(k)(1)) for the assessment and cleanup of real property that is complicated by the presence or potential presences of hazardous substances, pollutants, contaminants, petroleum and petroleum products, and controlled substances (*see* CERCLA Section 101(39)).

In performing the inquiries, including conducting interviews, collecting historical data and government records, inspecting the subject property and adjoining properties, and carrying out all other inquiries, all parties undertaking all appropriate inquiries must be attentive to the fact that the primary objectives of the proposed regulation are to identify the following types of information about the subject property prior to acquiring the property:

- Current and past property uses and occupancies;
- Current and past uses of hazardous substances;
- Waste management and disposal activities that could have caused releases or threatened releases of hazardous substances;

- Current and past corrective actions and response activities undertaken to address past and on-going releases of hazardous substances;
- Engineering controls;
- Institutional controls; and
- Properties adjoining or located nearby the subject property that have environmental conditions that could have resulted in conditions indicative of releases or threatened releases of hazardous substances on, at, in, or to the subject property.

The Negotiated Rulemaking Committee also developed a set of performance factors for the conduct and performance of each of the individual proposed standards and practices that make up the proposed rule. These performance factors, which are included in proposed § 312.20(e), include: (1) Gather the information that is required for each standard and practice that is publicly available (or otherwise obtainable), obtainable from its source within reasonable time and cost constraints, and which can practicably be reviewed, and (2) review and evaluate the thoroughness and reliability of the information gathered in complying with each standard and practice, taking into account information gathered in the course of complying with the other standards and practices of this subpart. The proposed performance factors are provided as guidelines to be followed in conjunction with the proposed objectives for the all appropriate inquiries. EPA and the Negotiated Rulemaking Committee are not suggesting that the goal of the conduct of the all appropriate inquiries is to identify every available document and piece of information regarding a property and the environmental conditions on the property. Instead, the objective of the conduct of all appropriate inquiries is to develop an understanding of the conditions of the property and determine whether or not there are conditions indicative of releases and threatened releases of hazardous substances (and pollutants, contaminants, controlled substances, and petroleum and petroleum products, if applicable) on, at, in or to the subject property.

The Agency requests comments on the proposed objectives and performance factors for the all appropriate inquiries requirements.

Persons seeking to establish a basis for one of the CERCLA landowner liability protections also should keep in mind that an objective of the all appropriate inquiries standards and practices is to characterize the environmental conditions at a property that are indicative of releases or threatened releases, prior to acquiring the property. This information may facilitate compliance with the additional statutory requirements applicable for claiming the liability protections after acquiring the property.

Failure to identify an environmental condition or identify a release or threatened release of a hazardous substance on, at, in or to a property during the conduct of all appropriate inquiries, does not relieve a landowner from complying with the other post-acquisition statutory requirements for obtaining the landowner liability protections. Landowners must comply with all the statutory requirements to obtain protection from liability. For example, an inability to identify a release or threatened release during the conduct of all appropriate inquiries does not negate the landowner's post-acquisition responsibilities under the statute to take reasonable steps to stop the release, prevent a threatened release, and prevent exposure to the release or threatened release.

6. What Are Institutional Controls?

Under the proposed rule, those performing all appropriate inquiries must seek to identify institutional controls. As defined in proposed § 312.10, institutional controls are non-engineered instruments, such as administrative and legal controls, that among other things, can help to minimize the potential for human exposure to contamination, protect the integrity of a remedy by limiting land or resource use, and provide information to modify behavior. For example, an institutional control might prohibit the drilling of a drinking water well in a contaminated aquifer or disturbing contaminated soils. Institutional controls may also be referred to as land use controls, activity and use limitations, *etc.,* depending on the program under which a response action is conducted.

Institutional controls are typically used whenever contamination precludes unlimited use and unrestricted exposure at the property. Thus, institutional controls may be needed both before and after completion of the remedial action. Institutional controls often must remain in place for an indefinite duration and, therefore, generally need to survive changes in property ownership (*i.e.*, run with the land) to be legally and practically effective. Some common examples of institutional controls include zoning restrictions, building or excavation permits, well drilling prohibitions, easements and covenants.

The importance of identifying institutional controls during all appropriate inquiries is twofold. First, institutional controls are usually necessary and important components of a remedy. Failure to abide by an institutional control may put people at risk of harmful exposure to hazardous substances. Second, an owner wishing to maintain protections from CERCLA liability as an innocent landowner, contiguous property owner, or bona fide prospective purchaser must fulfill ongoing obligations to comply with any land use restrictions established or relied on in connection with a response action and to not impede the effectiveness or integrity of any institutional control employed in connection with a response action. For a more detailed discussion of these requirements please see EPA, *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Quality for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability* (Common Elements, 2003).

Those persons conducting all appropriate inquiries may identify institutional controls through several of the standards and practices set forth in this rule. As noted, implementation of institutional controls may be accomplished through the use of several administrative and legal mechanisms, such as zoning, building permit requirements, easements, covenants, *etc.* Thus, for example, an easement implementing an institutional control might be identified through the review of chain of title documents under § 312.24(a). Furthermore, interviews with past and present owners, operators, or occupants pursuant to § 312.23; and reviews of federal, tribal, state, and local government records under § 312.26, may identify an institutional control or refer a person to the appropriate source to find an institutional control. For example, a review of federal Superfund records, including Records of Decision and Action Memoranda, as well as other information contained in the CERCLIS data base, may indicate that zoning was selected as an institutional control or an interview with a current operator may reveal an institutional control as part of an operating permit.

7. How Must Data Gaps Be Addressed in the Conduct of All Appropriate Inquiries?

As defined in proposed § 312.10, data gaps are a lack of or inability to obtain information required by the standards and practices listed in the proposed regulation, despite good faith efforts by the environmental professional or the prospective landowner (or grant

recipient) to gather such information pursuant to the proposed objectives for all appropriate inquiries. Proposed § 312.20(f) requires environmental professionals, prospective landowners and grant recipients to identify data gaps that affect their ability to identify conditions indicative of releases or threatened releases of hazardous substances (and in the case of grant recipients pollutants, contaminants, petroleum, and controlled substances). In addition, the proposal would require such persons to identify the sources of information consulted to address, or fill, the data gaps, and require such persons to comment upon the significance of the data gaps with regard to the ability to identify conditions indicative of releases or threatened releases in the all appropriate inquiries report. In addition, proposed § 312.21(c)(2) would require that environmental professionals include in the inquiries report an identification of data gaps that affect the ability of the environmental professional to identify conditions indicative of releases or threatened releases on, at, in, or to the subject property. Proposed § 312.21(c)(2) also would require that the inquiries report include comments regarding the significance of any data gaps on the environmental professional's ability to provide an opinion as to whether the inquiries have identified conditions indicative of releases or threatened releases.

A lack of information or an inability to obtain information that may affect the ability of an environmental professional to determine whether or not there are conditions indicative of a release or threatened release of a hazardous substance (or other contaminant) on, at, in or to a property can have significant consequences regarding a prospective landowner's ultimate ability to claim protection from CERCLA liability. A person's inability to obtain information regarding a property's ownership or use prior to acquiring a property can affect the landowner's ability to claim a protection from CERCLA liability after acquiring the property, if a lack of information results in the landowner's inability to comply with any other post-acquisition statutory obligations that are necessary to assert protection from CERCLA liability. For example, if a person does not identify, during the all appropriate inquiries prior to acquiring a property, a leaking underground storage tank that exists on the property, the landowner may not have sufficient information to comply with the statutory requirement to take reasonable steps to stop on-going releases after acquiring the property. This may result in an inability to claim protection against CERCLA liability for any on-going release. The proposed rule states the need to identify data gaps, address them when possible, and document their significance. Prospective landowners must consider the potential significance of any data gaps that may exist after conducting the pre-acquisition all appropriate inquiries on the landowner's ability to fulfill the additional statutory requirements after purchasing a property.

If a person properly conducts all appropriate inquiries pursuant to this rule, including the requirements concerning data gaps at proposed §§ 312.10, 312.20(f) and 312.21(c)(2), the person can fulfill the all appropriate inquiries requirements of CERCLA Sections 107(q), 107(r), and 101(35), even when there are data gaps in the inquiries. However, as explained further in this preamble, a fulfillment of the all appropriate inquiries requirements does *not,* by itself, provide a person with a protection from or defense to CERCLA liability. An inability to identify a release or threatened release during the conduct of all appropriate inquiries does not negate the landowner's ongoing or continuing responsibilities under the statute, including the requirements to take reasonable steps to stop the release, prevent a threatened release, and prevent exposure to the release or threatened release once the landowner has acquired a property. Also, if an existing institutional control or land use restriction is not identified during the conduct of all appropriate inquiries prior to the acquisition of a property, a landowner is not exempt from complying with the institutional control or land use restriction after acquiring the property. None of the other statutory requirements for the liability protections is satisfied by the results of the all appropriate inquiries.

The Agency notes that the mere fact that a purchaser conducted all appropriate inquiries does not provide any individual with a limitation from CERCLA liability. To qualify as a bona fide prospective purchaser, innocent landowner or a contiguous property owner, a person must, in addition to conducting all appropriate inquiries prior to acquiring a property, comply with all of the other statutory requirements. These criteria are summarized in section II.D. of this preamble. The all appropriate inquiries investigation may provide a purchaser with necessary information to comply with the other post-acquisition statutory requirements for obtaining liability protections. The failure to detect a release during the conduct of all appropriate inquiries does not exempt a landowner from his or her post-acquisition continuing obligations under other provisions of the statute.

Proposed § 312.20(f) points out that one way to address data gaps may be to conduct sampling and analysis. The Agency notes that the proposed regulation does *not* require that sampling and analysis be conducted to comply with the all appropriate inquiries requirements. The proposal only notes that sampling and analysis may be conducted, where appropriate, to obtain information to address data gaps.

The Agency requests comments on the proposed provisions addressing data gaps. The Agency also explicitly requests comments on the decision not to require sampling as part of the proposed all appropriate inquiries standards.

8. Do Small Quantities of Hazardous Substances That Do Not Pose Threats to Human Health and the Environment Have To Be Identified in the Inquiries?

The environmental professional should identify and evaluate all evidence of releases or threatened releases on, at, in or to the subject property, in accordance with generally accepted good commercial and customary standards and practices. However, as provided in proposed § 312.20(g), the environmental professional need not specifically identify, in the written report prepared pursuant to proposed § 312.21(c), extremely small quantities or amounts of contamination, except as needed to fairly describe the evidence identified by the environmental professional of releases and threatened releases that could pose a threat to human health or the environment.

*G. What Are the Proposed Requirements for Interviewing Past and Present Owners, Operators, and Occupants?*

CERCLA Section 101(35)(B)(iii)(II) requires EPA to include in the standards and practices for all appropriate inquiries ''interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.'' The proposed requirements for conducting interviews of past and present owners, operators, and occupants of the subject property are included in proposed § 312.23. The proposal identifies these interviews as being within the scope of the inquiry of the environmental professional. Therefore, all interviews would either

have to be conducted by the environmental professional or within the supervision or responsible charge of the environmental professional. The intent is that an individual meeting the definition of an environmental professional (§ 312.10) must oversee the conduct of, or review and approve the results of, the interviews to ensure the interviews are conducted in compliance with the proposed objectives and performance factors (§ 312.20). EPA also intends this proposed provision be used to help ensure that the information obtained from the interviews provides sufficient information, in conjunction with the results of all other inquiries, to allow the environmental professional to render an opinion with regard to conditions at the property that may be indicative of releases or threatened releases of hazardous substances (and pollutants, contaminants, petroleum and controlled substances, if applicable).

The proposed rule would require the environmental professional's inquiry to include interviewing the current owner and occupant of the subject property. In addition, the proposal provides that the inquiry of the environmental professional include interviews of additional individuals, including current and past facility managers with relevant knowledge of the property, past owners, occupants, or operators of the subject property, or employees of current and past occupants of the subject property as necessary to meet the proposed objectives and in accordance with the proposed performance factors. A primary objective of the interviews portion of the all appropriate inquiries is to obtain information regarding the current and past ownership and uses of the property, and obtain information regarding the conditions of the property. The proposed rule does not prescribe particular questions that must be asked during the interview. The Negotiated Rulemaking Committee and EPA concluded that the type and content of any questions asked during interviews will depend upon the site-specific conditions and circumstances and the extent of the environmental professional's (or other individual's under the supervision or responsible charge of the environmental professional) knowledge of the property prior to conducting the interviews. Therefore, the proposed rule does not include specific questions for the interviews, but requires that the interviews be conducted in a manner that achieves the proposed objectives and performance factors. EPA recommends that the environmental professional, or an individual under the supervision or responsible charge of the environmental professional, develop the interview questions prior to conducting the interview, and tailor the questions to the rule's objectives and performance factors. Interviews with current and past owners and occupants may provide opportunities to collect information about a property that is not previously recorded nor well documented or may provide valuable perspectives on how to find or interpret information required to complete other aspects of the all appropriate inquiries. Information gathered during the interview portion of the all appropriate inquiries may in turn provide valuable information for the on-site visual inspection. Persons conducting the interviews of current and past owners and occupants may want to spend some time during the interviews requesting information on the locations of operations or units used to store or manage hazardous substances on the property.

In the case of properties where there may be more than one owner or occupant, or many owners or occupants, the proposed rule would require the inquiry to include interviews of major occupants and those occupants that are using, storing, treating, handling or disposing (or are likely to have used, stored, treated, handled or disposed) of hazardous substances (or pollutants, contaminants, petroleum, and controlled substances, as applicable) on the property. The proposed rule does not specify the number of owners and occupants to be interviewed. The environmental professional must perform this function in the manner that best fulfills the proposed objectives and performance factors for the inquiries in proposed § 312.20(d) and (e). Environmental professionals may use their professional judgment to determine the specific occupants to be interviewed and the total number of occupants to be interviewed in seeking to comply with the proposed objectives and performance factors for the inquiries. Interviews must be conducted with individuals most likely to be knowledgeable about the current and past uses of the property, particularly with regard to current and past uses of hazardous substances on the property.

In the case of abandoned properties, the proposed rule would require the inquiry of the environmental professional to include interviews with one or more owners or occupants of neighboring or nearby properties. The Committee recognized that in the case of abandoned properties, it most likely will be difficult to identify or interview current or past owners and occupants of the property. Therefore, the Committee recommended that the conduct of all appropriate inquiries include interviewing at least one owner or occupant of a neighboring property to obtain information regarding past owners or uses of property in cases where the subject property is abandoned. The proposed rule defines an abandoned property as a ''property that can be presumed to be deserted, or an intent to relinquish possession or control can be inferred from the general disrepair or lack of activity thereon such that a reasonable person could believe that there was an intent on the part of the current owner to surrender rights to the property.'' As is the case with interviews conducted with current and past owners and occupants of the property, interview questions should be developed prior to the conduct of the interviews, and tailored to gather information to achieve the rule's objectives and performance factors.

The Agency requests comments on the proposed standards for conducting interviews of past and present owners and occupants of a property. EPA also requests comments on the proposed requirements to interview owners or occupants of neighboring properties in the case of abandoned properties.

*H. What Are the Proposed Requirements for Reviews of Historical Sources of Information?*

Historical documents and records may contain essential information regarding past ownership and uses of a property that may provide information regarding the potential for environmental conditions indicative of releases or threatened releases of hazardous substances to be present at the property. Historical documents and records, among others, may include chain of title documents, land use records, aerial photographs of the property, fire insurance maps, and records held at local historical societies. The proposed rule, as proposed § 312.24, would require the inquiry of the environmental professional to include a review of historical documents and records for the subject property that document the ownership and use of the property for a period of time as far back in the history of the property as it can be shown that the property contained structures, or from the time the property was first used for residential, agricultural, commercial, industrial, or government purposes.

The statutory criteria in the Brownfields Amendments require that reviews of historical sources of information be conducted to ''determine

previous uses and occupancies of the real property since the property was first developed.'' The Committee recommended, and EPA is proposing, that records be searched for information on the property covering a time period as far back in history as there is documentation that the property contained structures or was placed into use of some form. The Committee believed, and EPA agrees, that this provision follows Congressional intent. Historical documents and information must be reviewed to obtain information relevant to the proposed objectives and performance factors of proposed § 312.20(d) and (e). If a search of historical sources of information results in an inability of the inquiry to document previous uses and occupancies of the property as far back in history as there is documentation that the property contained structures or was placed into use of some form and such information cannot be addressed through the implementation of other inquiries or regulatory criteria, then the unavailable information must be documented as a data gap to the inquiries. The proposed requirements of §§ 312.20(f) and 312.21(c)(2) are applicable to all instances in the all appropriate inquiries that result in data gaps.

The proposed rule would not require that any specific type of historic information be collected. In particular, the proposed rule does not require that persons obtain a chain of title document for the property. The proposed rule provides that the purchaser or environmental professional use professional judgment when determining what types of historical documentation may provide the most useful information about a property's ownership, uses, and potential environmental conditions when seeking to comply with the proposed objectives and performance factors for the inquiries. The Negotiated Rulemaking Committee considered developing a specific list of historical documents that must be reviewed for each property. However, given the wide variety of property types and locations to which this proposed rule could apply, the Committee determined that any list of specific documents could result in undue burdens on many property owners due to difficulties in collecting any specific document for any particular property or property location. Therefore, the Committee recommended, and EPA is proposing, that the review of historical documents requirement allow the purchaser and environmental professional to use their judgment, in accordance with generally accepted good commercial and customary standards and practices, in locating the best available sources of historical information and reviewing such sources for information necessary to comply with the rule's objectives and performance factors.

As explained in section III.E.2 of this preamble, the purchaser or environmental professional may make use of previously collected information about a property when conducting all appropriate inquiries. The collection of historical information about a property may be a particular case where previously collected information may be valuable, as well as easily accessible. In addition, nothing in the proposed rule prohibits a person from using secondary sources (*e.g.*, a previously conducted title search) when gathering information about historical ownership and usage of a property. As explained in section III.E.2, information must be updated if it was last collected more than 180 days prior to the date of acquisition of the property.

The Agency requests comments on the proposed standards for reviews of historical sources of information.

*I. What Are the Proposed Requirements for Searching for Recorded Environmental Cleanup Liens?*

For purposes of this rule, recorded environmental cleanup liens are encumbrances on property for the recovery of incurred cleanup costs on the part of a state, tribal or federal government agency or other third party. Recorded environmental cleanup liens often provide an indication that environmental conditions currently or previously existed on a property that may have included the release or threatened release of a hazardous substance. The existence of an environmental cleanup lien should be used as an indicator of potential environmental concerns and as a basis for further investigation into the potential existence of on-going or continued releases or threatened releases of hazardous substances on, at, in, or to the subject property.

The Committee recommended, and EPA is proposing at proposed § 312.25, that the search for recorded environmental cleanup liens be performed either by the purchaser or through the inquiry of the environmental professional. The search for such liens may not necessarily require the expertise of an environmental professional and therefore may be more efficiently or more cost-effectively performed by the purchaser or an agent of the purchaser. Such liens may be included as part of the chain of title documents or may be recorded in some other format by state or local government agencies. If such information is collected by the purchaser, or other agent of the purchaser who is not under the supervision or responsible charge of the environmental professional, the proposed rule would require that any information on environmental cleanup liens that is collected on the part of the purchaser be provided to the environmental professional. The environmental professional can then make use of such information during the conduct of the all appropriate inquiries and when rendering conclusions or opinions regarding the environmental conditions of the property.

The Committee recommended that the all appropriate inquiries regulation require that purchasers and environmental professionals search for those environmental cleanup liens that are recorded under federal, tribal, state, or local law. Liens that are not recorded by government programs or agencies are not addressed by the language of the statute on the criteria for all appropriate inquiries (the statute speaks only of recorded liens). One caution about the conclusion one can draw from not finding a recorded environmental cleanup lien is that if EPA is in the process of cleaning up a site at the time of acquisition there is nothing to prevent EPA from recording such a lien post acquisition. This type of lien, a so-called windfall lien, has no statute of limitations on it and arises at the time EPA first spends Superfund money. States and localities may have similar mechanisms.

The Agency requests comments on the proposed standards for searching for recorded environmental cleanup liens.

*J. What Are the Proposed Requirements for Reviewing Federal, State, Tribal, and Local Government Records?*

The proposed rule, at proposed § 312.26, would require that federal, state, tribal and local government records be searched for information necessary to achieve the proposed objectives and performance factors, including information regarding the use and occupancy of and the environmental conditions at the subject property and conditions of nearby or adjoining properties that could have a impact upon the environmental conditions of the subject property. Federal, tribal, state and local government records may contain information regarding environmental conditions at a property. In particular, government records, or data bases of

such information, may include information on previously reported releases of hazardous substances, pollutants, contaminants, petroleum products and controlled substances. Government records may include information on institutional controls related to a particular property. For example, in the case of NPL sites, EPA Superfund records, including Action Memoranda and Records of Decision, may have information on institutional controls in place at such properties. Government records also may include information on activities or property uses that could cause releases or threatened releases to be present at a property. The proposed rule, at § 312.26(b), requires that federal, tribal, state, and local government records be searched for information indicative of environmental conditions at the subject property. The types of government records or data bases of records searched should include:

1. Government records of reported releases or threatened releases at the subject property, including previously conducted site investigation reports.

2. Government records of activities, conditions, or incidents likely to cause or contribute to releases or threatened releases, including records documenting regulatory permits that were issued to current or previous owners or operators at the property for waste management activities and government records that identify the subject property as the location of landfills, storage tanks, or as the location for generating and handling activities for hazardous substances, pollutants, contaminants, petroleum or controlled substances.

3. CERCLIS records—EPA's Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database contains general information on sites across the nation and in the U.S. territories that have been assessed by EPA, including sites listed on the National Priorities List (NPL). CERCLIS includes information on facility location, status, contaminants, institutional controls, and actions taken at particular sites. CERCLIS also contains information on sites being assessed under the Superfund Program, hazardous waste sites and potential hazardous waste sites.

4. Government-maintained records of public risks (if available)—the all appropriate inquiries government records search should include a search for available records documenting public health threats or concerns caused by, or related to, activities currently or previously conducted at the site.

5. Emergency Response Notification System (ERNS) records—ERNS is EPA's data base of oil and hazardous substance spill reports. The data base can be searched for information on reported spills of oil and hazardous substances by state.

6. Government registries, or publicly available lists of engineering controls, institutional controls, and land use restrictions. The all appropriate inquiries government records search must include a search for registries or publicly available lists of recorded engineering and institutional controls and recorded land use restrictions. Such records may be useful in identifying past releases on, at, in, or to the subject property or identifying continuing environmental conditions at the property.

In the case of all the government records listed above, the requirements of this criterion may be met by searching data bases containing the same government records mentioned in the list above that are accessible and available through government entities or private sources. The review of actual records is not necessary, provided that the same information contained in the government records and required to meet the requirements of this criterion and achieve the proposed objectives and performance factors for these regulations is attainable by searching available data bases.

In addition to reviewing government records, or data bases of information contained in government records, for information about the subject property, the proposed rule would require that government records for nearby and adjoining properties be reviewed to assess the potential impact to the subject property from hazardous substances and petroleum contamination migrating from contiguous or nearby properties. The proposed rule would require all appropriate inquiries to include a search of government records or data bases for information about nearby or adjoining properties to assess potential impacts to the environmental conditions of the subject property from off-site sources of contamination. The proposed rule would require that government records be searched to identify information relative to the proposed objectives and in accordance with the performance factors on: (1) Adjoining and nearby properties for which there are governmental records of reported releases or threatened releases (*e.g.*, properties currently listed on the National Priorities List (NPL), properties subject to corrective action orders under the Resource Conservation and Recovery Act (RCRA), properties with reported releases from leaking underground storage tanks); (2) adjoining and nearby properties previously identified or regulated by a government entity due to environmental conditions at a site (*e.g.*, properties previously listed on the NPL, former CERCLIS sites with notices of no further response actions planned); and (3) adjoining and nearby properties that have government-issued permits to conduct waste management activities (*e.g.*, facilities permitted to manage RCRA hazardous wastes).

In the case of government records searches for nearby properties, the proposed rule (at § 312.26(c)) includes minimum search distances for obtaining and reviewing records or data bases concerning activities and facilities located on nearby properties. The minimum search distances proposed are based on the Negotiated Rulemaking Committee's professional judgment regarding the value of obtaining information on potential releases or threatened releases from properties and activities within a given distance from the subject property that could have an impact on the subject property. For example, government records identifying properties listed on the NPL should be searched to obtain information on NPL sites located within one-half mile of the subject property. The Committee generally believed that NPL sites located beyond one-half mile of a property most likely would have little or no impact on the environmental conditions at the subject property. For nearby properties, the proposed rule includes proposed minimum search distances (*e.g.*, properties located either within one mile or one-half mile of the subject property) for each type of record to be searched to facilitate defining the scope of the records searches. In the case of two types of records, records of RCRA small quantity and large quantity generators and records of registered storage tanks, the all appropriate inquiries search need only identify RCRA generators and storage tanks located on adjoining properties (the proposal contains no requirement to search for these two types government records for other nearby properties).

EPA and the Negotiated Rulemaking Committee realize that property-specific and regional conditions may influence the appropriateness of the proposed search distances for any given type of record and property. Appropriate search distances for properties located in rural settings may differ from appropriate search distances for urban settings. In addition, ground water flow direction, depth to ground water, arid weather

conditions, the types of facilities located on nearby properties, as well as other factors may influence the degree of impact to a property from off-site sources. Therefore, the proposed rule would allow for the environmental professional to adjust any or all of the proposed minimum search distances for any of the record types, based upon professional judgment and the consideration of site-specific conditions or circumstances when seeking to achieve the proposed objectives and performance factors for the required inquiries. The proposed rule provides that the environmental professional may consider one or more of the following factors when determining an alternative appropriate search distance:

- The nature and extent of a release;
- Geologic, hydrogeologic, or topographic conditions of the subject property and surrounding environment;
- Land use or development densities;
- The property type;
- Existing or past uses of surrounding properties;
- Potential migration pathways (*e.g.*, groundwater flow direction, prevalent wind direction); or
- Other relevant factors.

The proposed rule would require environmental professionals to document the rationale for making any modifications to the required minimum search distances included in the proposed regulation.

The Agency requests comments on the proposed standards for reviewing federal, state, tribal and local government records.

*K. What Are the Proposed Requirements for Visual Inspections of the Subject Property and Adjoining Properties?*

1. Visual Inspections of the Subject Property

The proposed rule, at § 312.27, would require that a visual on-site inspection be conducted of the subject property. The proposed visual on-site inspection requirements include inspecting the facilities and any improvements on the property, as well as visually inspecting areas on the property where hazardous substances may currently be or in the past may have been used, stored, treated, handled, or disposed of. During their deliberations, members of the Negotiated Rulemaking Committee overwhelmingly stressed the need for every all appropriate inquiries investigation to include an on-site inspection. Many Committee members pointed out that on-site inspections of a property can provide the best source of information regarding indications of environmental conditions on a property. The Committee recommended, and EPA included in today's proposed rule, a requirement that a visual on-site inspection of the subject property be conducted in all but a few very limited cases and that physical limitations to the visual on-site inspection (*e.g.*, weather conditions, physical obstructions) be documented.

We note that persons conducting all appropriate inquiries with monies provided in a grant awarded under CERCLA Section 104(k)(2)(B) must, during the on-site visual inspection, inspect the facilities and any improvements on the property, as well as visually inspect any other areas on the property where hazardous substances may currently be or in the past may have been used, stored, treated, handled, or disposed. In addition, depending on the terms and conditions of the grant or cooperative agreement, the on-site visual inspection requirements could include inspecting the facilities, improvements, and other areas of the property where pollutants, contaminants, petroleum and petroleum products, or controlled substances may currently be or in the past may have been used, stored, treated, handled, or disposed.

The visual on-site inspection of a property during the conduct of all appropriate inquiries may be the most important aspect of the inquiries and the primary source of information regarding the environmental conditions on the property. In all cases, every effort must be made to conduct an on-site visual inspection of a property when conducting all appropriate inquiries.

Some members of the Committee raised concerns regarding a purchaser's or environmental professional's inability to obtain on-site access to a property in limited circumstances. Some members noted that extreme and prolonged weather conditions and remote locations can impede access to a property. Another limited circumstance that could result in a purchaser or environmental professional not being able to gain on-site access to a property during the all appropriate inquiries is the situation where a local government, a non-profit organization, or other party seeks to obtain ownership of a property, but the owner refuses to provide access to the local government or non-profit organization and the local government or non-profit organization exercises all good faith efforts to gain access to the property (*e.g.*, seeking assistance from state government officials) and remains unable to gain on-site access. Such circumstances may arise due to the unique nature of such transactions. Unlike commercial property transactions conducted by two private parties, where the economic and legal liability interests of both parties and the ability of either party to abandon the transaction can work in favor of the purchasing party's ability to gain access to a property prior to acquisition, property transactions between a private party and a local government or non-profit organization acting on behalf of the public interest, may not afford the local government or non-profit organization the same leverage, even if it is indeed in the public interest to attain ownership of the property. This situation may occur when the local government or non-profit association seeks to assess, cleanup, and revitalize an area, but the owner of the property is unreachable, unavailable, or otherwise unwilling to provide access to the property. In such limited circumstances, the public benefit attained from a government entity, or the non-profit organization, gaining ownership of a property may outweigh the need to gain on-site access to the property prior to the transfer of ownership.

The proposed rule would require, in such unusual circumstances, that the purchaser make good faith efforts to gain access to the property. In addition, the proposal notes that the mere refusal of a property owner to allow the purchaser to have access to the property does *not* constitute an unusual circumstance, absent the making of good faith efforts to otherwise gain access. The proposed rule, at proposed § 312.10, would define ''good faith'' as ''the absence of any intention to seek an unfair advantage or to defraud another party; an honest and sincere intention to fulfill one's obligations in the conduct or transaction concerned.''

In those unusual circumstances where a purchaser or an environmental professional, after good faith efforts, cannot gain access to a property and therefore cannot conduct an on-site visual inspection, the proposed rule would require that the property be visually inspected, or observed, by another method, such as through the use of aerial photography, or be inspected, or observed, from the nearest accessible vantage point, such as the property line or a public road that runs through or along the property. In addition, the proposed rule would require that the all appropriate inquiries report includes documentation of efforts undertaken by the purchaser or the environmental professional to obtain on-site access to the subject property and includes an explanation of why good faith efforts to gain access to subject property were unsuccessful. The proposed rule also

would require that the all appropriate inquiries report must include documentation of other sources of information that were consulted to obtain information necessary to achieve the proposed objectives and performance factors. This documentation should include comments, from the environmental professional who signs the report, regarding any significant limitations to the ability of the environmental professional to identify conditions indicative of releases or threatened releases on, at, in, or to the subject property, that may arise due to the inability of the purchaser or environmental professional to obtain on-site access to the property.

In addition, in those limited cases where an on-site visual inspection cannot be conducted prior to the date a property is acquired, EPA recommends that once a property is purchased, the property owner conduct an on-site visual inspection of the property. Such an inspection may provide important information necessary for the property owner to fully comply with the other statutory provisions, including on-going obligations, governing the CERCLA liability protections.

2. Visual Inspections of Adjoining Properties

The proposed rule, at proposed § 312.27, would require that the all appropriate inquiries investigation include visual inspections or observations of properties that adjoin the subject property. Visual inspections of adjoining properties may provide excellent information on the potential for the subject property to be affected by migrating contamination from adjoining properties. The Negotiated Rulemaking Committee discussed the merits and legalities of requiring parties to conduct on-site visual inspections of adjoining properties. Although several Committee members expressed a preference for visual inspections to be conducted on-site, the Committee was concerned that requiring purchasers or environmental professionals to gain on-site access to properties adjoined to the subject property would not be practicable. Therefore, the Committee recommended and EPA is proposing that visual observations of adjoining properties be conducted from the subject property's property line, one or more public rights-of-way, or other vantage point (*e.g.*, via aerial photography). Where practicable, a visual on-site inspection is recommended and may provide greater specificity of information. The proposed rule would require that the visual observations of adjoining properties include observing areas where hazardous substances currently may be, or previously may have been, stored, treated, handled, or disposed. Visual inspections or observations of adjoining properties otherwise also must be conducted to achieve the proposed objectives and performance goals for the all appropriate inquiries. Physical limitations to the visual inspections or observations of adjoining properties should be noted.

The Agency requests comments on the proposed requirements for conducting visual inspections of the subject property and adjoining properties, including the proposed exemption from the on-site visual inspection requirement in cases where good faith efforts result in an ability to gain access to a property.

3. Role of the Environmental Professional in the Visual Inspection

As mentioned in section III.D.4 of this preamble, EPA and the Negotiated Rulemaking Committee considered proposing to require all activities in the all appropriate inquiries investigation to be conducted by persons meeting the proposed definition of an environmental professional. Requiring that an environmental professional conduct all activities could ensure that all data collection and investigations are conducted in a manner and to a degree of specificity that allows the environmental professional to make best use of all information in forming opinions and conclusions regarding the environmental conditions at a property. However, after careful review of the specific activities included in the statutory criteria and conducting an assessment of the costs and burdens of such a requirement, EPA and the Committee concluded that it is not necessary for each and every regulatory requirement to be conducted by an environmental professional. As outlined in section III.E.1 of this preamble, the proposed rule would allow for certain aspects of the inquiries to be conducted solely by the purchaser or property owner, while providing that all other aspects be conducted under the supervision or responsible charge of the environmental professional. Among the activities that the proposed rule would require to be conducted under the supervision or responsible charge of an environmental professional is the on-site visual inspection.

It is EPA's recommendation that visual inspections of the subject property and adjoining properties be conducted by an individual who meets the proposed regulatory definition of an environmental professional. Although many other aspects of the all appropriate inquiries may be conducted sufficiently and accurately by individuals other than an environmental professional (*e.g.*, a research associate or librarian may be well qualified to search government records, an attorney may be well qualified to conduct a search for an environmental lien), EPA believes that an environmental professional is best qualified to conduct a visual inspection and locate and interpret information regarding the physical and geological characteristics of the property as well as information on the location and condition of equipment and other resources located on the property. EPA recognizes that other individuals who do not meet the proposed regulatory definition of an environmental professional, particularly when these individuals are conducting such activities under the supervision or responsible charge of an environmental professional, may have the required skills and knowledge to conduct an adequate on-site visual inspection. However, EPA believes that the professional judgment of an individual meeting the proposed definition of an environmental professional is vital to ensuring that all circumstances at the property indicative of environmental conditions and potential releases or threatened releases are properly identified and analyzed. An environmental professional is best qualified for identifying such situations and conditions and rendering a judgment or opinion regarding the potential existence of conditions indicative of environmental concerns.

An environmental professional should, at a minimum, be involved in planning for the on-site visual inspection. Information collected during the conduct of other required activities such as interviews with owners and occupants and reviews of government records should be reviewed in preparing for the on-site visual inspection. Although the proposed rule would not require the activities proposed as part of all appropriate inquiries investigation to be done in any particular sequence, EPA recommends that the on-site visual inspection occur after many of the other activities are completed to allow the environmental professional or other individuals conducting the inspections to make the best use of available information about the property when preparing for and conducting the on-site visual inspection. For example, if during interviews with owners and occupants of the property or during the review of government records, it becomes apparent that a property

currently used for general retail purposes once was owned by individuals issued permits for the storage or treatment of hazardous wastes, this could be noted during the preparation for the on-site visual inspection and the persons conducting the inspection should be prepared to look for remaining storage units or evidence of conditions caused by past spills or releases from on-site management units. In addition, it may be important to consider any specialized knowledge held by the purchaser or the environmental professional regarding current or past uses and ownership of the property prior to conducting the on-site visual inspection.

*L. What Are the Proposed Requirements for the Inclusion of Specialized Knowledge or Experience on the Part of the ''Defendant?''*

Because the conduct of all appropriate inquiries is one element of a protection against CERCLA liability, and the situation under which a property owner may need to assert that he or she qualifies for liability protection is when the property owner must defend his or her status as an innocent landowner, a contiguous property owner, or a bona fide prospective purchaser, the statute refers to the property owner, or the user of the all appropriate inquiries investigation, as the ''defendant.'' The Committee believed, and EPA agrees, that Congressional intent is to ensure that any information or special knowledge held by the purchaser or property owner with regard to a property and the conditions or situations present at the subject property be included in the pre-acquisition inquiries and be considered, along with all information collected during the conduct of all appropriate inquiries, when an environmental professional renders a judgment or opinion regarding the presence of environmental conditions indicative of releases or potentials releases of hazardous substances on, at, in, or to the subject property. This information should be revealed to all parties conducting the all appropriate inquiries and considered earlier in the inquiries process so that any specialized knowledge may be taken into account through the conduct of the other required aspects of the all appropriate inquiries.

Congress first added the innocent landowner defense to CERCLA in 1986. The Brownfields Amendments amended the innocent landowner defense and added to CERCLA the bona fide prospective purchaser and the contiguous property owner liability protections to CERCLA liability. The 1986 amendments to CERCLA established that among other elements necessary for a defendant to successfully assert the innocent landowner defense, a defendant must demonstrate that he or she had, at the time of acquisition of the property in question, made all appropriate inquiries into previous ownership and uses of the property. Congress directed courts evaluating a defendant's showing of all appropriate inquiries to take into account, among other things, ''any specialized knowledge or experience on the part of the defendant.'' Nothing in today's proposed rule would change the nature or intent of this requirement as it has existed in the statute since 1986 or in how the courts have interpreted the requirement to date.

The Negotiated Rulemaking Committee decided not to extend the proposed requirements for the consideration of any specialized knowledge or experience of the property owner beyond what was previously required under CERCLA and established through case law. The proposed rule, at proposed § 312.28, would require that all appropriate inquiries include specialized knowledge on the part of the prospective property owner of the subject property, the area surrounding the subject property, the conditions of adjoining properties, as well as other experience relative to the inquiries that may be applicable to identifying conditions indicative of releases or threatened releases at the subject property. The proposed rule also would require that the results of the inquiries take into account any specialized knowledge related to the property, surrounding areas, and adjoining properties held by the persons responsible for undertaking the inquiries, including any specialized knowledge on the part of the environmental professional.

In reviewing existing case law related to the innocent landowner defense, courts appear to have interpreted the ''specialized knowledge'' factor to mean that the professional or personal experience of the defendant may be taken into account when analyzing whether the defendant made all appropriate inquiries. For example, in *Foster* v. *United States*, 922 F. Supp. 642 (D. D.C. 1996), the owner of a property formerly owned by the General Services Administration and contaminated by, among other things, lead, mercury and PCBs, brought an action against the United States and District of Columbia, prior owners or operators of the site. The plaintiff was a principal in Long & Foster companies and purchased the property through a general partnership, and received it by quitclaim deed. The U.S. and D.C. counterclaimed against plaintiff. Foster asserted the innocent landowner defense. The court rejected the plaintiff's claim based in part on the defendant's specialized knowledge. The court found that his specialized knowledge included his position at Long & Foster, which did hundreds of millions of dollars of commercial real estate transactions, and his position as a partner in at least 15 commercial real estate partnerships. The partnership was involved as an investor in a number of real estate transactions, some of which involved industrial or commercial or mixed-use property. The court ruled that ''it cannot be said that [the partnership] is a group unknowledgeable or inexperienced in commercial real estate transactions.'' *Foster*, 922 F. Supp. at 656.

In *American National Bank and Trust Co. of Chicago* v. *Harcros Chemicals, Inc.*, 1997 WL 281295 (N.D. Ill. 1997), the plaintiff was a company ''involved in brownfields development, purchasing environmentally distressed properties at a discount, cleaning them up, and selling them for a profit.'' *American National Bank*, 1997 WL 281295 at *4. As a counter-claim defendant, the company asserted it was an innocent landowner and therefore not liable pursuant to CERCLA. The court found that among other reasons the defense failed because the company possessed specialized knowledge. The court ruled that the company was an expert environmental firm and possessed knowledge that should have alerted it to the potential problems at the site.

EPA points out that the proposed rule requires that the specialized knowledge of prospective landowners and the persons responsible for undertaking the all appropriate inquiries be taken into account when conducting the all appropriate inquiries for the purposes of identifying conditions indicative of releases or threatened releases at a property. However, as evidenced by the case law cited above, the determination of whether or not the all appropriate inquiries standard is met with regard to specialized knowledge remains within the discretion of the courts.

The Agency requests comments on the proposed provisions governing the inclusion of specialized knowledge or experience on the part of the purchaser and the environmental professional.

*M. What Are the Proposed Requirements for the Relationship of the Purchase Price to the Value of the Property, if the Property Was Not Contaminated?*

The proposed rule, at § 312.29, would require that the purchaser of the property consider whether or not the purchase price paid for the property reflects the fair market value of the property, assuming that the property is not contaminated. There may be many reasons that the price paid for a particular property is not an accurate reflection of the fair market value. The proposed rule would require that the purchaser consider whether any differential between the purchase price and the value of the property is due to the presence of releases or threatened releases of hazardous substances at the property.

The proposed rule does not require that a real estate appraisal be conducted to achieve compliance with this criterion. Although the Negotiated Rulemaking Committee discussed the potential value in requiring that an appraisal be conducted, the Committee determined that a formal appraisal is not necessary for the purchaser to make a general determination of whether the price paid for a property reflects its market value. Such a determination may be made by comparing the price paid for a particular property to prices paid for similar properties located in the same vicinity as the subject property, or by consulting a real estate expert familiar with properties in the general locality and who may be able to provide a comparability analysis. The objective is not to ascertain the exact value of the property, but to determine whether or not the purchase price paid for the property is reflective of its market value. Significant differences in the purchase price and market value of a property should be noted and the reasons for any differences should be noted. The Agency requests comments on these proposed requirements.

*N. What Are the Proposed Requirements for Commonly Known or Reasonably Ascertainable Information About the Property?*

The proposed rule, at proposed § 312.30, would require that landowners, brownfields grantees, and environmental professionals conducting the all appropriate inquiries consider commonly known information about the potential environmental conditions at a property. Commonly known information generally is information available in the local community that may be ascertained from the owner or occupant of a property, members of the local community, including owners or occupants of neighboring properties to the subject property, local or state government officials, local media sources, and local libraries and historical societies. Much of this information may be incidental to other information collected during the inquiries, but such information may be valuable to identifying conditions indicative of releases or threatened releases at the subject property. For example, neighboring property owners and local community members may have information regarding undocumented uses of a property during periods when the property was idle or abandoned. Local community sources may be good sources of information for understanding uses of a property and activities conducted at a property in the case of abandoned properties.

The collection and use of commonly known information about a property must be done in connection with the collection of all other required information for the purposes of achieving the proposed objectives and performance factors contained in proposed § 312.20. EPA recommends that persons undertaking the all appropriate inquiries make efforts to collect information on the subject property from a variety of sources, including sources located in the community in which the property is located, to the extent necessary to achieve the objectives and performance factors of § 312.20(d) and (e). Opinions included in the all appropriate inquiries report should be based upon a balance of all information collected. All information collected, including information available from the local community, should be considered in the final evaluation.

As mentioned above in section III.K., the Brownfields Amendments to CERCLA amended the innocent landowner defense previously added to CERCLA in 1986. In addition, the Brownfields Amendments added to CERCLA the bona fide prospective purchaser and the contiguous property owner liability protections to the statute. The 1986 amendments to CERCLA established that among other elements necessary for a defendant to successfully assert the innocent landowner defense, a defendant must take into account commonly known or reasonably ascertainable information about the property. Nothing in today's proposed rule would change the nature or intent of this requirement as it has existed in the statute since 1986 or in how the courts have interpreted the requirement to date.

There is some case law, related to the innocent landowner defense, that provide guidance for considering commonly known or reasonably ascertainable information about the property. For example, in *Wickland Oil Terminals* v. *Asarco, Inc.*, 1988 WL 167247 (N.D. Cal. 1988), the court noted that Wickland was aware of potential water quality problems at the subject property due to large piles of mining slag stored at the property, even though Wickland argued that previous owners withheld such information, because the information was available from other sources consulted by Wickland prior to purchasing the property, including the Regional Water Quality Control Board and a consulting firm hired by Wickland. Such information was commonly known by local sources and therefore should have been considered by Wickland during its conduct of all appropriate inquiries.

In *Hemingway Transport Inc.* v. *Kahn*, 174 F.R. 148 (Bankr. D. Mass. 1994), the court ruled against an innocent landowner claim because it found ''that had [the defendants] exerted a modicum of effort they may easily have discovered information that at a minimum would have compelled them to inspect the property further * * * the [defendants] could have taken a few significant steps, literally, to minimize their liability and discover information about the property * * *'' The court cited that one action the defendants should have taken to collect available information about the property is phone calls to city officials to inquire about conditions at the property.

EPA requests comment on the proposed requirements for including within the all appropriate inquiries commonly known or reasonably ascertainable information about the property.

*O. What Are the Proposed Requirements for ''The Degree of Obviousness of the Presence or Likely Presence of Contamination at the Property, and the Ability To Detect the Contamination by Appropriate Investigation?'*

The proposed rule, at § 312.31, would require that persons conducting the all appropriate inquiries consider all the information collected during the conduct of the inquiries in totality to ascertain the potential presence of a release or threatened release at the property. Persons conducting all appropriate inquiries, following the collection of all required information, must assess whether or not an obvious conclusion may be drawn that there are conditions indicative of a release or threatened release of hazardous

substances (or other substances, pollutants or contaminants) on, at, in, or to the property. In addition, the proposed rule would require parties to consider whether or not the totality of information collected prior to acquiring the property indicates that the parties should be able to detect a release or threatened release on, at, in, or to the property. Persons should undertake these considerations keeping in mind that ultimately it is for a court to assess the degree of obviousness of contamination.

The previous innocent landowner defense (added to CERCLA in 1986) required a court to consider the degree of obviousness of the presence or likely presence of contamination at a property, and the ability of the defendant (*i.e.*, the landowner) to detect the contamination by appropriate investigation. Nothing in today's proposed rule would change the nature or intent of this requirement as it has existed in the statute since 1986 or in how the courts have interpreted the requirement to date. Case law relevant to this criterion indicates that defendants may not be able to claim an innocent landowner defense if a preponderance of information available to a prospective landowner prior to acquiring the property indicates that the defendant should have concluded that there is a high likelihood of contamination at the site. In some cases (*e.g.*, *Hemingway Transport Inc.* v. *Kahn*, 174 F.R. 148 (Bankr. D. Mass. 1994), and *Foster* v. *United States*, 922 F. Supp. 642 (D.D.C. 1996), courts have ruled that if a defendant had done a bit more visual inspection or further investigation, based upon information available to the defendant prior to acquiring the property, it would have been obvious that the property was contaminated. In *Foster* v. *United States*, the court determined that the innocent landowner defense was not available based in part on the fact that the partnership presumed the site was free of contamination based upon cursory visual inspections despite evidence in the record that, at the time of the sale, the soil was visibly stained by PCB-contaminated oil. In addition, although the property was located in a run-down industrial area, the defendant did no investigation into the environmental conditions at the site prior to acquiring the property.

With regard to the conduct of sampling and analysis, today's proposed rule would not require sampling and analysis as part of the all appropriate inquiries investigation. However, members of the Committee recognized that sampling and analysis may be valuable in determining the possible presence and extent of potential contamination at a property. In addition, the fact that the all appropriate inquiry standards would not require sampling and analysis may not prevent a court from concluding that, under the circumstances of a particular case, sampling and analysis should have been conducted to meet ''the degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation'' criterion and obtain protection from CERCLA liability. Prospective landowners should keep in mind that the conduct of all appropriate inquiries prior to purchasing a property is only one requirement to which a purchaser must comply to claim protection from CERCLA liability once the purchase has taken place. The statute requires that persons, after acquiring a property, comply with continuing obligations to take reasonable steps to stop on-going releases at the property, prevent any threatened future releases, and prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substances (these criteria are summarized in detail in section II.D. of this preamble). In certain instances, depending upon site-specific circumstances and the totality of the information collected during the all appropriate inquiries prior to the property acquisition, it may be necessary to conduct sampling and analysis, either pre-or post-acquisition, to fully understand the conditions at a property, and fully comply with the statutory requirements for the CERCLA liability protections. In addition, sampling and analysis may help explain existing data gaps. Prospective purchasers should be mindful of all the statutory requirements for obtaining the CERCLA liability protections when considering whether or not to conduct sampling and analysis and when determining whether to undertake sampling and analysis prior to or after acquiring a property. Today's proposed regulation does *not* require that sampling and analysis be conducted as part of the all appropriate inquiries that must be conducted prior to acquiring a property.

The Agency requests comments on the proposed requirements for meeting the statutory provisions for including within the all appropriate inquiries the degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation. The Agency also specifically requests comments on the decision not to require sampling and analysis as part of the all appropriate inquiries regulations.

## IV. Requests for Public Comments

EPA is requesting comment on the standards and practices included as part of today's proposed rule. Public comments may be submitted to the Agency electronically or by mail, as explained in the **SUPPLEMENTARY INFORMATION** section of this preamble. As explained in that section, the Agency requests that when submitting comments, please state your views as clearly as possible, describe any assumptions applicable to your comments, provide any technical information and data that support your views, and provide specific examples to illustrate your concerns. Specifically, the Agency is interested in receiving public comment on the following:

- The proposed requirements for an all appropriate inquiries report, including the signature requirements for the all appropriate inquiries report.
- The proposed qualifications included in the definition of an environmental professional and the provisions allowing for individuals who do not qualify as environmental professionals to contribute to inquiry activities.
- The proposed division of responsibilities for conducting all appropriate inquiries.
- The proposal to establish the date on which title is transferred on a property as the date on which the property is acquired.
- The proposed provisions for using previously conducted all appropriate inquiries.
- The proposed requirements for using all appropriate inquiries conducted by third parties.
- The proposed objectives and performance factors for the all appropriate inquiries requirements.
- The proposed provisions for addressing data gaps.
- The proposal to not require sampling and analysis as part of the all appropriate inquiries standards.
- The proposed standards for conducting interviews of past and present owners and occupants of a property.
- The proposed requirements to interview owners or occupants of neighboring properties in the case of abandoned properties.
- The proposed standards for reviews of historical sources of information.

- The proposed standards for searching for recorded environmental cleanup liens.
- The proposed standards for reviewing federal, state, tribal and local government records.
- The proposed requirements for conducting visual inspections of the subject property and adjoining properties, including the limited exemption from conducting an on-site inspection when good faith efforts result in an inability to obtain access to a property.
- The proposed provisions governing the inclusion of specialized knowledge or experience on the part of the purchaser and the environmental professional.
- The proposed requirements for considering the relationship of the purchase price to the value of a property, if the property was not contaminated.
- The proposed requirements for commonly known or reasonably ascertainable information about the property.
- The proposed requirements for the degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.
- The proposed information collection requirements, including the need for such information, the accuracy of the provided burden estimates associated with the requirements, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques.
- The methodology used to estimate the costs and impacts of today's proposed rule, including the estimated incremental labor hours used to estimate the incremental cost of the proposed rule.
- The methodology employed to identify impacted small entities and estimating the potential impacts on small entities.
- The identification of voluntary consensus standards that are applicable to and compliant with today's proposed standards and practices for all appropriate inquiries.

## V. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or 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.

Pursuant to the terms of Executive Order 12866, it has been determined that today's proposed rule is a ''significant regulatory action'' because this proposed rule contains novel legal or policy issues.

Based upon the results of its Economic Impacts Analysis (EIA), EPA has determined that this proposed rule will have an annual effect on the economy of less than $100 million. The annualized benefits associated with today's proposed rule have not been monetized but are identified and summarized in the document titled ''Economic Impacts Analysis for the Proposed All Appropriate Inquiries Regulation.'' A copy of the EIA is available in the docket for today's proposed rule. The Agency solicits comment on the methodology and results from the analysis as well as any data that the public believes would be useful in a revised analysis.

#### 1. Methodology

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. The Economic Impacts Analysis (EIA) conducted in support of today's proposed rule examines both costs and qualitative benefits in an effort to assess the overall net change in social welfare. The primary focus of the EIA document is on compliance costs and economic impacts. Below, EPA summarizes the analytical methodology and findings for the proposed all appropriate inquiries rule. The information presented is derived from the EIA.

The all appropriate inquiries regulation potentially will apply to most commercial property transactions. The requirements will be applicable to any public or private party, who may potentially claim protection from CERCLA liability as an innocent landowner, a bona fide prospective purchaser, or a contiguous property owner. However, the conduct of all appropriate inquiries, or environmental due diligence, is not new to the commercial property market. Prior to the Brownfields Amendments to CERCLA, commercial property transactions often included an assessment of the environmental conditions at properties prior to the closing of any real estate transaction whereby ownership was acquired for the purposes of confirming the conditions at the property or to establish an innocent landowner defense should environmental contamination be discovered after the property was acquired. The process most prevalently used for conducting all appropriate inquiries, or environmental site assessments, is the process developed by the American Society for Testing and Materials (ASTM) and entitled ''E1527, Phase I Environmental Site Assessment Process.'' In addition, some properties, particularly in cases where the subject property is assumed not to be contaminated or was never used for industrial or commercial purposes, were assessed using another, less rigorous process developed by ASTM, sometimes referred to as a ''transaction screen'' and entitled ''E1528 Standard Practice for Environmental Site Assessments: Transaction Screen Process.''

Our first step in assessing the economic impacts of the proposed rule was establishing a baseline to represent the relevant aspects to the commercial real estate market in the absence of any changes in regulations. Because under existing conditions almost all transactions concerning commercial properties are accompanied by either an environmental site assessment (ESA) conducted in accordance with ASTM E1527–2000 or a transaction screen as specified in ASTM E1528, these practices were assumed to continue even in the absence of the all appropriate inquiries regulation. The numbers of each type of assessment were estimated on the basis of industry data for recent years, with recent growth rates in transactions assumed to continue for the 10 year period covered by the EIA. An adjustment in the relative numbers of the ESAs and transaction screens was made to account for the fact that, under the proposed rule, an ESA will provide more certain protection from liability. This adjustment was made by comparing shifts between the two procedures that

occurred when the Brownfields Amendments established the ASTM E1527–2000 standard as the interim standard for all appropriate inquiries, and thus as one requirement for qualifying as an innocent landowner, bona fide purchaser, or contiguous property owner.

We then considered the requirements included in the recommendation of the Negotiated Rulemaking Committee and those included in a few options that the committee considered but did not adopt. We then compared the costs of each alternative option to costs associated with conducting assessments using the ASTM E1527–2000 standard. We present this cost comparison to comply with current OMB guidance to consider a less stringent alternative than the Agency's preferred alternative when conducting an economic impacts assessment. As explained in section V.I., EPA has determined that the ASTM E1527–2000 standard is inconsistent with applicable law. However, the alternative is included in the economics assessment for cost comparison purposes.

When compared to the ASTM E1527–2000 standard (*i.e.*, the baseline standard), today's proposed rule is expected to result in a reduced burden for the conduct of interviews in those cases where the subject property is abandoned; increased burden associated with documenting recorded environmental cleanup liens; increased burden for documenting the reasons for the price and market value of a property in those cases where the purchase price paid for the subject property is significantly below the market value of the property; and increased burden for recording information about the degree of obviousness of contamination at a property. The three regulatory options that were considered by the Negotiated Rulemaking Committee but not adopted would have required: (1) All non-clerical work to be performed by an individual meeting the proposed definition of an environmental professional; (2) no requirement to interview owners/occupants of neighboring properties when the subject property is abandoned; and (3) limited soil or water sampling. An additional option is presented in the EIA for the proposed rule to comply with guidance recently issued by OMB. OMB ''Circular A–4'' requires that agencies analyze a continuum of regulatory options, including a regulatory alternative that is less stringent than an agency's preferred alternative. To fully comply with the OMB guidance, the EIA includes a comparison of the cost impacts of our preferred option and the other options considered by the Negotiated Rulemaking Committee to an option that would entail using the ASTM E1527–2000 standard as the federal regulation. As explained in more detail below, it is EPA's opinion that the ASTM E1527–2000 standard is not compliant with the statutory requirements for all appropriate inquires, and therefore if adopted may not provide the benefits of the CERCLA liability protections. However, the option is provided in the EIA for the purposes of a cost comparison.

To estimate the changes in costs resulting from the rule or the regulatory options, we developed a costing model. This model estimates the total costs of conducting site assessments as the product of costs per assessment, numbers of assessments per year, and the number of years in the analysis. The costs per assessment, in turn, are calculated by dividing each assessment into individual labor activities, estimating the labor time associated with each, and assigning a per-hour labor cost to each activity on the basis of the labor category most appropriate to that activity. Labor times and categories are assumed to depend on the size and type of property being assessed, with the nationwide distribution of properties based on data from industry on environmental sites assessments and brownfield sites.[3] The estimates and assignments of categories are made based on the experience of professionals who have been involved in large numbers of site assessments, and who are therefore skilled in cost estimation for the relevant activities. Other costs, such as reproduction and the purchase of data, are added to the labor costs to form the estimates of total costs per assessment. These total costs, stratified by size and type of property, are then multiplied by estimated numbers of assessments of each size and type to generate our estimates of total annual costs. The model was tested by comparing its results to industry-wide estimates of average price of conducting assessments under baseline conditions, and found to agree quite well. We also used the model to estimate total costs per year under the proposed rule and each option; the differences between these estimated costs and the estimated costs in the baseline constituted our estimates of the incremental regulatory costs. EPA requests comments on our methodology for estimating the costs and impacts of today's proposed rule, including comments on our estimates of the incremental labor hours necessary to conduct activities required by the proposed rule but not currently conducted using the baseline standard (*i.e.*, ASTM E1527–2000).

The EIA provides a qualitative assessment of the benefits of the proposed rule. The benefits discussed are those that may be attributed to an increased level of certainty with regard to CERCLA liability provided to prospective purchasers of potentially contaminated properties, including brownfields, who comply with the provisions of the proposed rule and comply with the other statutory provisions associated with the liability protections. Our basic premise for associating certain benefits to the proposed rule is that we believe that the level of certainty provided by the liability protections may result in increased brownfields property transactions. However, it is difficult to predict how many additional transactions may occur that involve brownfields properties in response to the increased certainty of the liability protections. It also is difficult to obtain data on changes in behaviors and practices of prospective property owners in response to the liability protections. Therefore, we made no attempt to quantify potential benefits or compare the benefits to estimated incremental costs.

The Agency believes that the increased level of certainty with regard to CERCLA liability provided by complying with the proposed rule and other statutory requirements may have the affect of increasing property transactions involving brownfields and other contaminated and potentially-contaminated properties and improving information about environmental conditions at these properties. The types of indirect benefits that we believe may result from this increase in the number of transactions involving these types of properties include increased numbers of cleanups, reduced use of greenfields, potential increases in property values, and potential increases in quality of life measures (*e.g.*, decreases in urban blight, reductions in traffic, congestion, and reduced pollution due to mobile source emissions). However, as stated above, the benefits of the proposed rule are considered only qualitatively, due to the difficulty of predicting how many additional brownfields and contaminated property transactions may occur in response to the increased certainty of liability protections provided by the proposed rule, as well as the difficulty in getting data on

[3] The distribution of abandoned properties and properties with known owners, modeled as a range, is based on an estimate of vacant lands in urban areas and an estimate of abandoned Superfund sites.

changes in behaviors and practices in response to the availability of the liability protections. EPA is confident that the new liability protections afforded to prospective property owners, if they comply with the all appropriate inquiries provisions, will result in increased benefits. EPA is not able to quantify, with any significant level of confidence, the exact proportion of the benefits attributed only to the availability of the liability protections and the all appropriate inquiries regulations. For these reasons, the costs and benefits could not be directly compared.

2. Summary of Regulatory Costs

For a given property, the costs of compliance with the proposed rule relative to the baseline depend on whether that property would have been assessed, in absence of the all appropriate inquiries regulation, with an ASTM E1527–2000 assessment process or with a simpler transaction screen (ASTM E1528). The table below shows that the average incremental cost of the proposed rule relative to conducting an ASTM E1527–2000 is estimated to be between $41 and $47. For the small percentage of cases for which a transaction screen would have been preferred to the ASTM E1527–2000 in the baseline, but which now would require an assessment in compliance with the proposed rule, the average incremental cost is estimated to be between $1,448 and $1,454. We estimate that approximately 97 percent of property transactions will bear only the incremental cost of the proposed rule relative to the ASTM E1527–2000 process. Therefore, the weighted average incremental cost per transaction is estimated to be fairly low, between $84 and $89.

The three regulatory options considered by the Negotiated Rulemaking Committee, but not recommended, would result in higher incremental costs from the base case. Option 1, which would require all of the non-clerical tasks in the all appropriate inquiries to be performed by an individual meeting the definition of environmental professional, would add an average of $539 per property assessment (or approximately $1,946 per property, assuming a transition from a transaction screen). Option 2 would have the same interviewing requirements as the baseline standard (*i.e.*, ASTM E1527–2000), rather than require that interviews be conducted with neighboring property owners in the case of abandoned properties. EPA estimates that the incremental cost of Option 2, or the incremental cost of incorporating all the additional aspects of the proposed rule, over the baseline, except for the neighboring property owners/occupants interview requirement for abandoned properties, would be $54 per assessment (or $1,460 per property, assuming a transition from a transaction screen). Option 3, which would require the all appropriate inquiries to include limited sampling and analysis, would result in average incremental costs of either $1,439 or $2,845, depending on whether, under baseline conditions, an ASTM E1527–2000 process or a transaction screen (ASTM E1528) would have been used. The alternative of using the ASTM E1527–2000 standard as the federal regulation would result in no ($0) incremental cost per property assessment (or, on average, $1,407 per property, assuming a transition from a transaction screen). We note, however, that EPA has found that the ASTM E1527–2000 standard is inconsistent with the statutory requirements for all appropriate inquiries.

SUMMARY OF INCREMENTAL PER-ASSESSMENT COST ESTIMATES

| | Average incremental cost relative to phase I ESA under ASTM E1527–2000 (97% of transactions) | Average incremental cost for transition from transaction screen (under ASTME1528) (3% of transactions) |
|---|---|---|
| Proposed AAI Rule | $41–$47 | $1,448–$1,454 |
| Option 1—Environmental Professional Only | 539 | 1,946 |
| Option 2—Unchanged Interview Requirement | 54 | 1,460 |
| Option 3—Limited Sampling ASTM E1527–2000 | 1,439 | 2,845 |
| | 0 | 1,407 |

The total annualized costs of the proposed rule and the four additional options considered, in total and relative to the base case, are shown in the exhibit below. The total costs were calculated over a period of ten years from the start of 2004 and then annualized at a three and seven percent discount rate. When a discount rate of three percent is used, the estimated total annual costs for the options considered by the Negotiated Rulemaking Committee range from just under $700 million to over $1 billion per year, compared to the baseline costs of $663.8 million and the costs associated with the option of using the ASTM E1527–2000 standard of over $677 million. The proposed regulation adds between $26 and $28 million per year, while the incremental costs association with the options considered by the Negotiated Rulemaking Committee range from $30 million to almost $460 million per year. The incremental cost of the alternative of using the ASTM 1527–2000 standard is over $13 million. When a discount rate of seven percent is used, the estimated total annual costs for the options considered by the Negotiated Rulemaking Committee range from $710 million to over $1 billion per year, compared to the baseline costs of $683.5 million and the costs associated with using the ASTM E1527 standard of over $697 million. The proposed regulation adds between $27 and $29 million per year, while the incremental costs association with the options considered by the Negotiated Rulemaking Committee range from $31 million to over $470 million per year. The incremental cost of using the ASTM E1527–2000 standard is close to $14 million.

SUMMARY OF ANNUAL COST ESTIMATES (IN MILLIONS), DISCOUNTED AT THREE PERCENT

| | Base case | Proposed rule | Option 1 | Option 2 | Option 3 | ASTM E1527 |
|---|---|---|---|---|---|---|
| Total Annual Cost | $663.8 | $690.1–$691.9 | $844.0 | $693.9 | $1,122.0 | $677.3 |
| Incremental Total Annual Cost Relative to the Base Case | 0 | 26.3–28 | 180.2 | 30.0 | 458.1 | 13.5 |

SUMMARY OF ANNUAL COST ESTIMATES (IN MILLIONS), DISCOUNTED AT THREE PERCENT

| | Base case | Proposed rule | Option 1 | Option 2 | Option 3 | ASTM E1527 |
|---|---|---|---|---|---|---|
| Total Annual Cost | $683.5 | $710.5–$712.3 | $868.9 | $714.4 | $1,155.0 | $697.3 |
| Incremental Total Annual Cost Relative to the Base Case | 0 | 27–28.8 | 185.4 | 30.8 | 471.5 | 13.8 |

As shown in the table above, the estimated total annual cost of today's proposed rule, calculated using a discount rate of seven percent, would be between $710.5 and $712.3 million and the estimated total annual incremental cost would be between $27 and $29 million. Thus, the proposed rule will have an incremental annual effect on the economy of less than $100 million per year.

*B. Paperwork Reduction Act*

The information collection requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR Number 2144.01.

Under the PRA, EPA is required to estimate the notification, reporting and recordkeeping costs and burdens associated with the requirements specified in the proposed rule. This proposed rule, if it is promulgated, will require persons wanting to claim one of the liability protections under CERCLA to conduct some activities that go beyond current customary and usual business practices (*i.e.*, beyond ASTM E1527–2000) and therefore will impose an information collection burden under the provisions of the Paperwork Reduction Act. The information collection activities are associated with the activities mandated in Section 101(35)(B) of CERCLA for those persons wanting to claim protection from CERCLA liability. None of the information collection burdens associated with the provisions of today's rule include requirements to submit the collected information to EPA or any other government agency. Information collected by persons affected by today's proposed rule may be useful to such persons if their liability under CERCLA for the release or threatened release of a hazardous substance is challenged in a court.

The activities associated with today's proposed rule that go beyond current customary and usual business practices include interviews with neighboring property owners and/or occupants in those cases where the subject property is abandoned, documentation of all environmental cleanup liens in the Phase I Environmental Site Assessment report, discussion of the relationship of purchase price to value of the property in the report, and consideration and discussion of whether additional environmental investigation is warranted. Paperwork burdens are estimated to be 487,676 hours annually, with a total cost of $26,546,749 annually. The estimated average burden hours per response is estimated to be approximately one hour (or 25 hours per response, assuming a transition from a transaction screen). The estimated average cost burden per response is estimated to be either $56 or $1,456, depending on whether, under baseline conditions, an ASTM E1527–2000 process or a transaction screen (ASTM E1528) would have been used.

Under the Paperwork Reduction Act ''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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule, which includes this ICR, under Docket ID Number SFUND–2004–0001. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this document 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, Attention: Desk Officer for EPA.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 26, 2004, a comment to OMB is best assured of having its full effect if OMB receives it by September 27, 2004. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.,* 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 the purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using the North American Industrial Classification System (NAICS) and codified 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.

Since all non-residential property transactions could be affected by today's proposed rule, if it is promulgated, large numbers of small entities could be affected to some degree. However, we estimate that the effects, on the whole, will not be significant for small entities. We estimate that, for the majority of small entities, the average incremental cost of today's proposed rule relative to conducting an ASTM E1527–2000 will be between $41 and $47. When we annualize the incremental cost of $47 per property transaction over ten years at a seven percent discount rate, we estimate that the average annual cost increase per establishment per property transaction will be $7. Thus, the cost impact to small entities is estimated to not be significant. A more detailed summary of our analysis of the potential impacts of today's proposed rule to small entities is included in ''Economic Impacts Analysis of the Proposed All Appropriate Inquiries Regulation.'' This document is included in the docket for today's proposed rule.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We estimate that, on average, 266,000 small entities may purchase commercial real estate in any given year and therefore could potentially be impacted by today's proposed rule. Though large numbers of small entities could be affected to some degree, we estimated that the effects, on the whole, would not be significant for small entities. We estimate that, for the majority of small entities, the average incremental cost of today's proposed rule relative to conducting an ASTM E1527–2000 will be between $41 and $47. For the small percentage of cases for which a transaction screen would have been preferred to the ASTM E1527–2000 in the baseline, but which now will require an assessment in compliance with the proposed rule, the average incremental cost of conducting an environmental site assessment will be between $1,448 and $1,454. When we annualize the incremental cost per property transaction over ten years at a seven percent discount rate, we estimate that for the majority of small entities the average annual cost increase per establishment per property transaction will be approximately $7. For the small percentage of entities transitioning from transaction screens to the all appropriate inquiries requirements of the proposed rule, the average annual cost increase per establishment per property transaction will be $207.[4]

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless considered impacts to small entities in the development of this rule. As described in Section II.F. of this preamble, we developed this proposed rule using a negotiated rulemaking committee. The interests of small entities, including small businesses and small communities, were represented on the Negotiated Rulemaking Committee for All Appropriate Inquiries. Committee members representing small entities, including representatives from small environmental services firms and representatives from organizations representing small and rural communities, participated in each meeting of the Committee. Today's proposed rule includes provisions that are the direct result of input from these representatives to the Committee.

EPA continues to be interested in the potential impacts of the proposed rule on small entities. EPA welcomes comments on issues related to such impacts. In addition, EPA requests comments on the methodology employed to identify impacted small entities and estimate the potential impacts on small entities.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA 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 of 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 to have meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duty on any state, local, or tribal governments. EPA also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs of $100 million or more as a result of today's proposed rule. Therefore, today's proposed rule is not subject to the requirements of Sections 202 and 205 of UMRA.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an

[4] For a very small percentage of entities transitioning from transaction screens to the all appropriate inquiries requirements, the maximum increase per establishment per property transaction is estimated to be approximately $2,830. When we annualize this incremental cost per property transaction over ten years at a seven percent discount rate, we estimate that the maximum annual cost increase per establishment per property transaction will be $400. We estimate that approximately one fifth of one percent of the properties transitioning from a transaction screen to a Phase I ESA will have an impact of this magnitude each year.

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 proposal 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. No state and local government bodies will incur compliance costs as a result of today's rulemaking. Therefore, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did ensure that meaningful and timely input was obtained from state and local government officials when developing the proposed rule. Representatives from two different state agencies participated on the Negotiated Rulemaking Committee. In addition, representatives from three different organizations representing local government officials participated on the Committee. State and local government representatives participated in the Committee negotiations at each meeting of the Committee. Today's proposed rule includes provisions that are the direct result of input from the state and local government representatives to the Committee negotiations.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this proposed rule, EPA did ensure that meaningful and timely input was obtained from tribal officials when developing the proposed rule. Representatives from two different tribal communities participated on the Negotiated Rulemaking Committee. A tribal government representative participated in the Committee negotiations at each meeting of the Committee. Today's proposed rule includes provisions that are the direct result of input from the tribal representatives to the Committee negotiations.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

This proposal is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 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 significantly adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

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) 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. Today's proposed rule involves technical standards. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) apply.

EPA proposes to use the all appropriate inquiries standard developed with the assistance of a regulatory negotiation committee comprised of various affected stakeholder groups. EPA considered using the existing standard developed by ASTM as the federal standard for all appropriate inquiries. This standard is known as the ASTM E1527–2000 standard (''Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process''). EPA estimates that the adoption of the ASTM standard would be less costly than the Agency's preferred option (the option developed by the Negotiated Rulemaking Committee) or any of the other options considered by the Negotiated Rulemaking Committee and presented in the Economic Impact Analysis. The existing ASTM E1527–2000 standard equates to the base case in the economic impact analysis. The adoption of this alternative would reduce the annual paperwork burden associated with the proposed rule by approximately 236,000 hours. However, for reasons provided below, EPA has determined that the ASTM E1527–2000 standard is inconsistent with applicable law.

In CERCLA Section 101(35)(B), Congress included ten specific criteria to be used in promulgating the all appropriate inquiries rule. The ASTM standards do not address all of the required criteria. For example, the ASTM standards do not provide for interviews of past owners, operators, and occupants of a facility. The statute, however, states that the promulgated

standard ''shall include * * * interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.'' CERCLA Section 101(35)(B)(iii)(II).

In addition, ASTM's existing standard does not meet other statutory requirements. CERCLA 101(35)(B)(iii)(III) mandates that EPA shall include in the federal regulations setting standards for all appropriate inquiries: ''Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine the previous uses and occupancies of the real property since the property was first developed.'' ASTM E1527–2000 requires identification of all obvious uses of the property from the present, back to the property's obvious first developed use or back to 1940, whichever is earlier. Congress did not qualify the review to obvious uses, and did not give an alternate date regarding the review.

Further, CERCLA 101(35)(B)(iii)(VI) states that: ''Visual inspections of the facility and adjoining properties'' shall be included in the inquiry. ASTM E1527–2000 does not mandate visual inspections of adjoining properties. ASTM's standard requires noting any observed past uses, but does not require the conduct of an actual visual inspection of adjoining properties. This contrasts with the mandatory language Congress required with respect to the intent to conduct visual inspection of adjoining properties.

CERCLA 101(35)(B)(iii)(VIII) also states that the standards for all appropriate inquiries shall include: ''The relationship of the purchase price to the value of the property, if the property was not contaminated.'' In its E1527–2000 standard, ASTM limits this requirement to actual knowledge by the defendant of a significantly lower price for a property when compared with comparable properties. The statute's criteria does not limit this to actual knowledge.

Finally, CERCLA 101(35)(B)(iii)(IV) states that the standards for all appropriate inquiries shall include: ''Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.'' ASTM's E1527–2000 standard describes a much more limited scope for this search than the statute requires. We are aware that in some instances, liens may be filed in places other than recorded land title records and therefore a more comprehensive standard is necessary to match the scope intended by the statute.

As a result, use of the ASTM standards would be inconsistent with applicable law. We welcome comments on this aspect of the proposed rulemaking. Specifically, we invite the public to comment on our determination that the alternative of adopting the ASTM E1527–2000 standard as the federal standards for conducting all appropriate inquiries would be inconsistent with applicable law. In addition, we invite the public to identify other potentially applicable voluntary consensus standards for conducting all appropriate inquiries and to explain why EPA should use such standards in promulgating this regulation. Prior to promulgating a final regulation setting federal standards and practices for all appropriate inquiries, the Agency will cite or reference applicable and compliant voluntary consensus standards in the final regulation to facilitate implementation of the final regulations and avoid disruption to parties using voluntary consensus standards that are found to be fully compliant with the federal regulations.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. Our goal is to ensure that all citizens live in clean and sustainable communities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). EPA's brownfields program has a particular emphasis on addressing concerns specific to environmental justices communities. Many of the communities and neighborhoods that are most significantly impacted by brownfields are environmental justice communities. EPA's brownfields program targets such communities for assessment, cleanup, and revitalization. The brownfields program has a long history of working with environmental justice communities and advocates through our technical assistance and grant programs. In addition to the monies awarded to such communities in the form of assessment and cleanup grants, the brownfields program also works with environmental justice communities through our job training grants program. The job training grants provide money to government entities to facilitate the training of persons living in or near brownfields communities to attain skills for conducting site assessments and cleanups.

Given that environmental justice communities are significantly impacted by brownfields, and the federal standards for all appropriate inquiries may play a primary role in encouraging the assessment and cleanup of brownfields sites, EPA made it a priority to obtain input from representatives of environmental justice interest groups during the development of the proposed rulemaking. The Negotiated Rulemaking Committee tasked with developing the all appropriate inquiries proposed rule included three representatives from environmental justice advocacy groups. Each representative played a significant role in the negotiations and in the development of today's proposed rule.

**List of Subjects in 40 CFR Part 312**

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 18, 2004.

**Michael O. Leavitt,**

*Administrator.*

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended by revising part 312 as follows:

## PART 312—INNOCENT LANDOWNERS, STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES

### Subpart A—Introduction

Sec.
312.1 Purpose, applicability, scope, and disclosure obligations.

### Subpart B—Definitions and References

312.10 Definitions.

312.11 References.

**Subpart C—Standards and Practices**

312.20 All appropriate inquiries.
312.21 Results of inquiry by an environmental professional.
312.22 Additional inquiries.
312.23 Interviews with past and present owners, operators, and occupants.
312.24 Reviews of historical sources of information.
312.25 Searches for recorded environmental cleanup liens.
312.26 Reviews of Federal, State, tribal and local government records.
312.27 Visual inspections of the facility and of adjoining properties.
312.28 Specialized knowledge or experience on the part of the defendant.
312.29 The relationship of the purchase price to the value of the property, if the property was not contaminated.
312.30 Commonly known or reasonably ascertainable information about the property.
312.31 The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

**Authority:** Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(35)(B).

## Subpart A—Introduction

### § 312.1 Purpose, applicability, scope and disclosure obligations.

(a) *Purpose.* The purpose of this section is to provide standards and procedures for ''all appropriate inquiries'' for the purposes of CERCLA Section 101(35)(B).

(b) *Applicability.* The requirements of this part are applicable to:

(1) Persons seeking to qualify for:

(i) The innocent landowner defense pursuant to CERCLA Sections 101(35) and 107(b)(3);

(ii) The bona fide prospective purchaser liability protection pursuant to CERCLA Sections 101(40) and 107(r);

(iii) The contiguous property owner liability protection pursuant to CERCLA Section 107(q); and

(2) Persons conducting site characterization and assessments with the use of a grant awarded under CERCLA Section 104(k)(2)(B).

(c) *Scope.* (1) Persons seeking to qualify for one of the liability protections under paragraph (b)(1) of this section must conduct investigations as required in this part, including an inquiry by an environmental professional, as required under § 312.21, and the additional inquiries defined in § 312.22, to identify conditions indicative of releases or threatened releases, as defined in CERCLA Section 101(22), of hazardous substances, as defined in CERCLA Section 101(14).

(2) Persons identified in paragraph (b)(2) of this section must conduct investigations required in this part, including an inquiry by an environmental professional, as required under § 312.21, and the additional inquiries defined in § 312.22, to identify conditions indicative of releases and threatened releases of hazardous substances, as defined in CERCLA Section 101(22), and as applicable per the terms and conditions of the grant or cooperative agreement, releases and threatened releases of:

(i) Pollutants and contaminants, as defined in CERCLA Section 101(33);

(ii) Petroleum or petroleum products excluded from the definition of ''hazardous substance'' as defined in CERCLA Section 101(14); and

(iii) Controlled substances, as defined in 21 U.S.C. 802.

(d) *Disclosure obligations.* None of the requirements of this part limits or expands disclosure obligations under any federal, state, tribal, or local law, including the requirements under CERCLA Sections 101(40)(C) and 107(q)(1)(A)(vii) requiring persons, including environmental professionals, to provide all legally required notices with respect to the discovery of releases of hazardous substances. It is the obligation of each person, including environmental professionals, conducting the inquiry to determine his or her respective disclosure obligations under Federal, State, tribal, and local law and to comply with such disclosure requirements.

## Subpart B—Definitions and References

### § 312.10 Definitions.

(a) Terms used in this part and not defined below, but defined in either CERCLA or 40 CFR part 300 (the National Oil and Hazardous Substances Pollution Contingency Plan) shall have the definitions provided in CERCLA or 40 CFR part 300.

(b) When used in this part, the following terms have the meanings provided as follows:

*Abandoned property* means: property that can be presumed to be deserted, or an intent to relinquish possession or control can be inferred from the general disrepair or lack of activity thereon such that a reasonable person could believe that there was an intent on the part of the current owner to surrender rights to the property.

*Adjoining properties* means: any real property or properties the border of which is (are) shared in part or in whole with that of the subject property, or that would be shared in part or in whole with that of the subject property but for a street, road, or other public thoroughfare separating the properties.

*Data gap* means: a lack of or inability to obtain information required by the standards and practices listed in subpart C of this part despite good faith efforts by the environmental professional or persons identified under § 312.1(b), as appropriate, to gather such information pursuant to §§ 312.20(d)(1) and 312.20(d)(2).

*Environmental Professional* means:

(1) A person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases (per § 312.1(c)) to the surface or subsurface of a property, sufficient to meet the objectives and performance factors in § 312.20(d) and (e).

(2) Such a person must:

(i) Hold a current Professional Engineer's or Professional Geologist's license or registration from a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) and have the equivalent of three (3) years of full-time relevant experience; or

(ii) Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in § 312.21 and have the equivalent of three (3) years of full-time relevant experience; or

(iii) Have a Baccalaureate or higher degree from an accredited institution of higher education in a relevant discipline of engineering, environmental science, or earth science and the equivalent of five (5) years of full-time relevant experience; or

(iv) As of the date of the promulgation of this rule, have a Baccalaureate or higher degree from an accredited institution of higher education and the equivalent of ten (10) years of full-time relevant experience.

(3) An environmental professional should remain current in his or her field through participation in continuing education or other activities and should be able to demonstrate such efforts.

(4) The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in § 312.21(b).

(5) A person who does not qualify as an environmental professional under the foregoing definition may assist in the conduct of all appropriate inquiries

in accordance with this part if such person is under the supervision or responsible charge of a person meeting the definition of an environmental professional provided above when conducting such activities.

*Good faith* means: the absence of any intention to seek an unfair advantage or to defraud another party; an honest and sincere intention to fulfill one's obligations in the conduct or transaction concerned.

*Institutional controls* means: Non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy.

*Relevant experience,* as used in the definition of environmental professional in this section, means: participation in the performance of environmental site assessments that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases (per § 312.1(c)) to the subject property.

**§ 312.11 References.**

(a) When used in part 312 of this chapter, the following publications are incorporated by reference:

(1)–(2) [Reserved]

(b) [Reserved]

## Subpart C—Standards and Practices

**§ 312.20 All appropriate inquiries.**

(a) ''All appropriate inquiries'' pursuant to CERCLA section 101(35)(B) must include:

(1) An inquiry by an environmental professional (as defined in § 312.10), as provided in § 312.21;

(2) The collection of information pursuant to § 312.22 by persons identified under § 312.1(b); and

(3) Searches for recorded environmental cleanup liens, as required in § 312.25.

(b) All appropriate inquiries may include the results of and information contained in an inquiry previously conducted by, or on the behalf of, persons identified under § 312.1(b) and who are responsible for the inquiries for the subject property, provided:

(1) Such information was collected during the conduct of all appropriate inquiries in compliance with the requirements of this part (40 CFR Part 312) and with CERCLA Sections 101(35)(B), 101(40)(B) and 107(q)(A)(viii);

(2) Such information was collected or updated within one year prior to the date of acquisition of the subject property;

(3) Not withstanding paragraph (b)(2) of this section, the following components of the inquiries were conducted or updated within a 180 days of and prior to the date of purchase of the subject property:

(i) Interviews with past and present owners, operators, and occupants (see § 312.23);

(ii) Searches for recorded environmental cleanup liens (see § 312.25);

(iii) Reviews of federal, tribal, state, and local government records (see § 312.26);

(iv) Visual inspections of the facility and of adjoining properties (see § 312.27); and

(v) The declaration by the environmental professional (see § 312.21(d)).

(4) Previously collected information is updated to include relevant changes in the conditions of the property and specialized knowledge, as outlined in § 312.28, of the persons conducting the all appropriate inquiries for the subject property, including persons identified in § 312.1(b) and the environmental professional, defined in § 312.10.

(c) All appropriate inquiries can include the results of report(s) specified in § 312.21(c), that have been prepared by or for other persons, provided that:

(1) The report(s) meets the objectives and performance factors of this regulation, as specified in paragraphs (d) and (e) of this section; and

(2) The person specified in § 312.1(b) and seeking to use the previously collected information reviews the information and conducts the additional inquiries pursuant to §§ 312.28, 312.29 and 312.30 and the all appropriate inquiries are updated per paragraph (b)(3) of this section, as necessary.

(d) *Objectives.* The standards and practices set forth in this part for All Appropriate Inquiries are intended to result in the identification of conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the subject property.

(1) In performing the all appropriate inquiries, as defined in this section and provided in the standards and practices set forth this subpart, the persons identified under § 312.1(b)(1) and the environmental professional, as defined in § 312.10, must seek to identify through the conduct of the standards and practices set forth in this subpart, the following types of information about the subject property:

(i) Current and past property uses and occupancies;

(ii) Current and past uses of hazardous substances;

(iii) Waste management and disposal activities that could have caused releases or threatened releases of hazardous substances;

(iv) Current and past corrective actions and response activities undertaken to address past and on-going releases of hazardous substances;

(v) Engineering controls;

(vi) Institutional controls; and

(vii) Properties adjoining or located nearby the subject property that have environmental conditions that could have resulted in conditions indicative of releases or threatened releases of hazardous substances to the subject property.

(2) In the case of persons identified in § 312.1(b)(2), the standards and practices for All Appropriate Inquiries set forth in this part are intended to result in the identification of conditions indicative of releases and threatened releases of hazardous substances, pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802) on, at, in, or to the subject property. In performing the all appropriate inquiries, as defined in this section and provided in the standards and practices set forth in this subpart, the persons identified under § 312.1(b) and the environmental professional, as defined in § 312.10, must seek to identify through the conduct of the standards and practices set forth in this subpart, the following types of information about the subject property:

(i) Current and past property uses and occupancies;

(ii) Current and past uses of hazardous substances, pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802);

(iii) Waste management and disposal activities;

(iv) Current and past corrective actions and response activities undertaken to address past and on-going releases of hazardous substances, pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802);

(v) Engineering controls;

(vi) Institutional controls; and

(vii) Properties adjoining or located nearby the subject property that have environmental conditions that could have resulted in conditions indicative of releases or threatened releases of hazardous substances, pollutants, contaminants, petroleum and petroleum products, and controlled substances (as

defined in 21 U.S.C. 802) to the subject property.

(e) Performance factors. In performing each of the standards and practices set forth in this subpart and to meet the objectives stated in paragraph (d) of this section, the persons identified under § 312.1(b) or the environmental professional as defined in § 312.10 (as appropriate to the particular standard and practice) must seek to:

(1) Gather the information that is required for each standard and practice listed in this subpart that is publicly available, obtainable from its source within reasonable time and cost constraints, and which can practicably be reviewed; and

(2) Review and evaluate the thoroughness and reliability of the information gathered in complying with each standard and practice listed in this subpart taking into account information gathered in the course of complying with the other standards and practices of this subpart.

(f) To the extent there are data gaps (as defined in § 312.10) in the information developed as part of the inquiries per paragraph (e) of this section that affect the ability of persons (including the environmental professional) conducting the all appropriate inquiries to identify conditions indicative of releases or threatened releases (such as in the historical record of property uses) in each area of inquiry under each standard and practice such persons should identify such data gaps, identify the sources of information consulted to address such data gaps, and comment upon the significance of such data gaps with regard to the ability to identify conditions indicative of releases or threatened releases of hazardous substances [and in the case of persons identified in § 312.1(b)(2), hazardous substances, pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802)] on, at, in, or to the subject property. Sampling and analysis may be conducted to develop information to address data gaps.

(g) Releases and threatened releases identified as part of the all appropriate inquiries should be noted in the report of the inquiries. These standards and practices however are not intended to require the identification of quantities or amounts, either individually or in the aggregate, of hazardous substances pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802) that because of said quantities and amounts, generally would not pose a threat to human health or the environment.

**§ 312.21 Results of inquiry by an environmental professional.**

(a) Persons identified under § 312.1(b) must undertake an inquiry, as defined in paragraph (b) of this section, by an environmental professional, or conducted under the supervision or responsible charge of, an environmental professional, as defined in § 312.10. Such inquiry is hereafter referred to as ''the inquiry of the environmental professional.''

(b) The inquiry of the environmental professional must include the requirements set forth in §§ 312.23 (interviews with past and present owners * * *), 312.24 (reviews of historical sources * * *), 312.26 (reviews of government records), 312.27 (visual inspections), 312.30 (commonly known or reasonably attainable information), and 312.31 (degree of obviousness of the presence * * * and the ability to detect the contamination * * *). In addition, the inquiry should take into account information provided to the environmental professional as a result of the additional inquiries conducted by persons identified in § 312.1(b) and in accordance with the requirements of § 312.22.

(c) The results of the inquiry by an environmental professional must be documented in a written report that, at a minimum, includes the following:

(1) An opinion as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances [and in the case of inquiries conducted for persons identified in § 312.1(b)(2) conditions indicative of releases and threatened releases of pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802)] on, at, in, or to the subject property;

(2) An identification of data gaps (as defined in § 312.10) in the information developed as part of the inquiry that affect the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances [and in the case of inquiries conducted for persons identified in § 312.1(b)(2) conditions indicative of releases and threatened releases of pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802)] on, at, in, or to the subject property and comments regarding the significance of such data gaps on the environmental professional's ability to provide an opinion as to whether the inquiry has identified conditions indicative of releases or threatened releases on, at, in, or to the subject property. If there are data gaps such that the environmental professional cannot reach an opinion regarding the identification of conditions indicative of releases and threatened releases, such data gaps must be noted in the environmental professional's opinion per paragraph (c)(1) of this section; and

(3) The qualifications of the environmental professional(s).

(d) The environmental professional must place the following statement in the written document identified in paragraph (c) of this section and sign the document:

> [I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in § 312.10 of this part.
>
> [I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR part 312.

**§ 312.22 Additional inquiries.**

(a) Persons identified under § 312.1(b) must provide the following information to the environmental professional responsible for conducting the activities listed in § 312.21:

(1) As required by § 312.25 and if not otherwise obtained by the environmental professional, environmental cleanup liens against the subject property that are filed or recorded under Federal, tribal, State, or local law;

(2) As required by § 312.28, specialized knowledge or experience of the person identified in § 312.1(b);

(3) As required by § 312.29, the relationship of the purchase price to the fair market value of the subject property, if the property was not contaminated; and

(4) As required by § 312.30, commonly known or reasonably ascertainable information about the subject property.

(b) [Reserved].

**§ 312.23 Interviews with past and present owners, operators, and occupants.**

(a) Interviews with past and present owners, operators, and occupants of the subject property must be conducted for the purposes of achieving the objectives and performance factors of § 312.20(d) and (e).

(b) The inquiry of the environmental professional must include interviewing the current owner and occupant of the

subject property. If the property has multiple occupants, the inquiry of the environmental professional shall include interviewing major occupants, as well as those occupants likely to use, store, treat, handle or dispose of hazardous substances [and in the case of inquiries conducted for persons identified in § 312.1(b)(2) pollutants, contaminants, petroleum and petroleum products, and controlled substances (as defined in 21 U.S.C. 802)], or those who have likely done so in the past.

(c) The inquiry of the environmental professional also should include, to the extent necessary to achieve the objectives and performance factors of § 312.20(d) and (e), interviewing one or more of the following persons:

(1) Current and past facility managers with relevant knowledge of uses and physical characteristics of the property;

(2) Past owners, occupants, or operators of the subject property; or

(3) Employees of current and past occupants of the subject property.

(d) In the case of inquiries conducted at ''abandoned properties,'' as defined in § 312.10, where there is evidence of potential unauthorized uses of the subject property or evidence of uncontrolled access to the subject property, the environmental professional's inquiry must include interviewing one or more (as necessary) owners or occupants of neighboring or nearby properties from which it appears possible to have observed uses of, or releases at, such abandoned properties for the purpose of gathering information necessary to achieve the objectives and performance factors of § 312.20(d) and (e).

**§ 312.24 Reviews of historical sources of information.**

(a) Historical documents and records must be reviewed for the purposes of achieving the objectives and performance factors of § 312.20(d) and (e). Historical documents and records may include, but are not limited to, aerial photographs, fire insurance maps, building department records, chain of title documents, and land use records.

(b) Historical documents and records reviewed must cover a period of time as far back in the history of the subject property as it can be shown that the property contained structures or from the time the property was first used for residential, agricultural, commercial, industrial, or governmental purposes. For the purpose of achieving the objectives and performance factors of § 312.20(d) and (e), the environmental professional may exercise professional judgment in context of the facts available at the time of the inquiry as to how far back in time it is necessary to search historical records.

**§ 312.25 Searches for recorded environmental cleanup liens.**

(a) All appropriate inquiries must include a search for the existence of environmental cleanup liens against the subject property that are filed or recorded under federal, tribal, state, or local law.

(b) All information collected regarding the existence of such environmental cleanup liens associated with the subject property must be provided to the environmental professional.

**§ 312.26 Reviews of Federal, State, tribal and local government records.**

(a) Federal, tribal, State, and local government records or data bases of government records of the subject property and adjoining properties must be reviewed for the purposes of achieving the objectives and performance factors of § 312.20(d) and (e).

(b) With regard to the subject property, the review of federal, tribal, and state government records or data bases of such government records and local government records and data bases of such records should include:

(1) Records of reported releases or threatened releases, including site investigation reports for the subject property;

(2) Records of activities, conditions, or incidents likely to cause or contribute to releases or threatened releases as defined in § 312.1(c), including landfill and other disposal unit location records and permits, storage tank records and permits, hazardous waste handler and generator records and permits, federal, tribal and state government listings of sites identified as priority cleanup sites, and spill reporting records;

(3) CERCLIS records;

(4) Public health records;

(5) Emergency Response Notification System records;

(6) Registries or publicly available lists of engineering controls; and

(7) Registries or publicly available lists of institutional controls, including environmental land use restrictions, applicable to the subject property.

(c) With regard to nearby or adjoining properties, the review of federal, tribal, state, and local government records or databases of government records should include the identification of the following:

(1) Properties for which there are government records of reported releases or threatened releases. Such records or databases containing such records and the associated distances from the subject property for which such information should be searched include the following:

(i) Records of NPL sites or tribal- and state-equivalent sites (one mile);

(ii) RCRA facilities subject to corrective action (one mile);

(iii) Records of federally-registered, or state-permitted or registered, hazardous waste sites identified for investigation or remediation, such as sites enrolled in state and tribal voluntary cleanup programs and tribal- and state-listed brownfields sites (one-half mile);

(iv) Records of leaking underground storage tanks (one-half mile); and

(2) Properties that previously were identified or regulated by a government entity due to environmental concerns at the property. Such records or databases containing such records and the associated distances from the subject property for which such information should be searched include the following:

(i) Records of delisted NPL sites (one-half mile);

(ii) Registries or publicly available lists of engineering controls (one-half mile);

(iii) Registries or publicly available lists of institutional controls (one-half mile); and

(iv) Records of former CERCLIS sites with no further remedial action notices (one-half mile).

(3) Properties for which there are records of federally-permitted, tribal-permitted or registered, or state-permitted or registered waste management activities. Such records or databases that may contain such records include the following:

(i) Records of RCRA small quantity and large quantity generators (adjoining properties)

(ii) Records of federally-permitted, tribal-permitted, or state-permitted (or registered) landfills and solid waste management facilities (one-half mile); and

(iii) Records of registered storage tanks (adjoining property).

(4) A review of additional government records with regard to sites identified under paragraphs (c)(1) through (c)(3) of this section may be necessary in the judgment of the environmental professional for the purpose of achieving the objectives and performance factors of § 312.20(d) and (e).

(d) The search distance from the subject property boundary for reviewing government records or databases of government records listed in paragraph (c) of this section may be modified based upon the professional judgment of

the environmental professional. The rationale for such modifications must be documented by the environmental professional. The environmental professional may consider one or more of the following factors in determining an alternate appropriate search distance:

(1) The nature and extent of a release;

(2) Geologic, hydrogeologic, or topographic conditions of the subject property and surrounding environment;

(3) Land use or development densities;

(4) The property type;

(5) Existing or past uses of surrounding properties;

(6) Potential migration pathways (*e.g.*, groundwater flow direction, prevalent wind direction); or

(7) Other relevant factors.

**§ 312.27 Visual inspections of the facility and of adjoining properties.**

(a) For the purpose of achieving the objectives and performance factors of § 312.20(d) and (e), the inquiry of the environmental professional must include:

(1) A visual on-site inspection of the subject property and facilities and improvements on the subject property, including a visual inspection of the areas where hazardous substances may be or may have been used, stored, treated, handled, or disposed. Physical limitations to the visual inspection must be noted.

(2) A visual inspection of adjoining properties, from the subject property line, public rights-of-way, or other vantage point (*e.g.*, aerial photography), including a visual inspection of areas where hazardous substances may be or may have been stored, treated, handled or disposed. Physical limitations to the inspection of adjacent properties must be noted.

(b) Persons conducting site characterization and assessments using a grant awarded under CERCLA section 104(k)(2)(B) must include in the inquiries referenced in § 312.27(a) visual inspections of areas where hazardous substances, and may include, as applicable per the terms and conditions of the grant or cooperative agreement, pollutants and contaminants, petroleum and petroleum products, and controlled substances as defined in 21 U.S.C. 802 may be or may have been used, stored, treated, handled or disposed at the subject property and adjoining properties.

(c) Except as noted in this subsection, a visual on-site inspection of the subject property must be conducted. In the unusual circumstance where an on-site visual inspection of the subject property cannot be performed because of physical limitations, remote and inaccessible location, or other inability to obtain access to the property, provided good faith (as defined in § 312.10) efforts have been taken to obtain such access, an on-site inspection will not be required. (The mere refusal of a voluntary seller to provide access to the subject property does not constitute an unusual circumstance.) In such unusual circumstances, the inquiry of the environmental professional must include:

(1) Visually inspecting the subject property via another method (such as aerial imagery for large properties), or visually inspecting the subject property from the nearest accessible vantage point (such as the property line or public road for small properties);

(2) Documentation of efforts undertaken to obtain access and an explanation of why such efforts were unsuccessful; and

(3) Documentation of other sources of information regarding releases or threatened releases at the subject property that were consulted in accordance with § 312.20(e). Such documentation should include comments by the environmental professional on the significance of the failure to conduct a visual on-site inspection of the subject property with regard to the ability to identify conditions indicative of releases or threatened releases on, at, in, or to the subject property, if any.

**§ 312.28 Specialized knowledge or experience on the part of the defendant.**

(a) Persons to whom this part is applicable per § 312.1(b) must take into account, their specialized knowledge of the subject property, the area surrounding the subject property, the conditions of adjoining properties, and any other experience relevant to the inquiry, for the purpose of identifying conditions indicative of releases or threatened releases at the subject property, as defined in § 312.1(c).

(b) All appropriate inquiries, as outlined in § 312.20, are not complete unless the results of the inquiries take into account the relevant and applicable specialized knowledge and experience of the persons responsible for undertaking the inquiry (as described in § 312.1(b)).

**§ 312.29 The relationship of the purchase price to the value of the property, if the property was not contaminated.**

(a) Persons to whom this part is applicable per § 312.1(b) must consider whether the purchase price of the subject property reasonably reflects the fair market value of the property, if the property were not contaminated.

(b) Persons who conclude that the purchase price of the subject property does not reasonably reflect the fair market value of that property, if the property were not contaminated, should consider whether or not the differential in purchase price and fair market value is due to the presence of releases or threatened releases of hazardous substances.

(c) Persons conducting site characterization and assessments with the use of a grant awarded under CERCLA section 104(k)(2)(B) and who know that the purchase price of the subject property does not reasonably reflect the fair market value of that property, if the property were not contaminated, should consider whether or not the differential in purchase price and fair market value is due to the presence of releases or threatened releases of hazardous substances, pollutants, contaminants, petroleum and petroleum products, and/or controlled substances as defined in 21 U.S.C. 802.

**§ 312.30 Commonly known or reasonably ascertainable information about the property.**

(a) Throughout the inquiries, persons to whom this part is applicable per § 312.1(b) and environmental professionals conducting the inquiry must take into account commonly known or reasonably ascertainable information within the local community about the subject property and consider such information when seeking to identify conditions indicative of releases or threatened releases, as set forth in § 312.1(c), at the subject property.

(b) Commonly known information may include information obtained by the person to whom this part applies per § 312.1(b) or by the environmental professional about releases or threatened releases at the subject property that is incidental to the information obtained during the inquiry of the environmental professional.

(c) To the extent necessary to achieve the objectives and performance factors of § 312.20(d) and (e), the environmental professional should gather information from varied sources whose input either individually or taken together may provide commonly known or reasonably ascertainable information about the subject property; the environmental professional may refer to one or more of the following sources of information:

(1) Current owners or occupants of neighboring properties or properties adjacent to the subject property;

(2) Local and state government officials who may have knowledge of, or

information related to, the subject property;

(3) Others with knowledge of the subject property; and

(4) Other sources of information (*e.g.*, newspapers, websites, community organizations, local libraries and historical societies).

**§ 312.31 The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.**

(a) Persons to whom this part is applicable per § 312.1(b) and environmental professionals conducting an inquiry of a property on behalf of such persons must take into account the information collected under § 312.23 through 312.30 in considering the degree of obviousness of the presence of releases or threatened releases at the subject property.

(b) Persons to whom this part is applicable per § 312.1(b) and environmental professionals conducting an inquiry of a property on behalf of such persons must take into account the information collected under § 312.23 through 312.30 in considering the ability to detect contamination by appropriate investigation. The inquiry of the environmental professional should include an opinion regarding additional appropriate investigation, if any.

[FR Doc. 04–19429 Filed 8–25–04; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 312

**[SFUND–2004–0001; FRL–7806–8]**

**RIN 2050–AF04**

### Notice of Public Meeting To Discuss Standards and Practices for All Appropriate Inquiries

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice of public meeting.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) will hold a public meeting to discuss EPA's proposed rule that would set federal standards and practices for conducting all appropriate inquiries, as required under Sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The proposed rule is published elsewhere in this issue of the **Ferderal Register** and will be available on the EPA Web site at *http://www.epa.gov/brownfields* before the date of the public meeting. The public meeting will be held on Wednesday, September 22, 2004 in St. Louis, Missouri at the times and location specified below.

The purpose of the public meeting is for EPA to listen to the views of stakeholders and the general public on the Agency's proposed standards and practices for all appropriate inquiries. During the public meeting, EPA officials will discuss the proposed rule, as well as accept public comment and input on the proposed rule.

**DATES:** The public meeting will be held on September 22, 2004 at America's Center in St. Louis, Missouri. The meeting will be held from 1 p.m. to 3 p.m. c.d.t.

**ADDRESSES:** The public meeting will be held in America's Ballrooms 221 and 222 of The America's Center, 701 Convention Plaza, St. Louis, Missouri, 63101.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment at 202–566–2774 or *overmeyer.patricia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the general public. Interested parties and the general public are invited to participate in the public meeting. Parties wishing to provide their views to EPA on the proposed rule, or to listen to the views of other parties, are encouraged to attend the public meeting. Any person may speak at the public meeting; however, we encourage those planning to give oral testimony to pre-register with EPA. Those planning to speak at the public meeting should notify Patricia Overmeyer, of EPA's Office of Brownfields Cleanup and Redevelopment, at 202–566–2774, U.S. Environmental Protection Agency (mc:5105T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or via e-mail at *overmeyer.patricia@epa.gov* no later than September 17, 2004. If you cannot pre-register, you may sign up at the door until two hours before the start of the meeting in St. Louis on September 22, 2004. Oral testimony will be limited to 7 minutes per participant. Any member of the public may file a written statement in addition to, or in lieu of, making oral testimony. A verbatim transcript of the hearing and any written statements received by EPA at the public meeting will be made available at the OSWER Docket and on the EDOCKET Web site, at the addresses provided below. If you plan to attend the public hearing and need special assistance, such as sign language interpretation or other reasonable accommodations, contact Patricia Overmeyer, at the above email address or phone number.

Interested parties not able to attend the public meeting on September 22, 2004 may submit written comments to the Agency. All written comments must be submitted to EPA in compliance with the instructions that will be provided in the preamble to the proposed rule. This instructions are summarized below.

Parties wishing to comment on the proposed rule may submit written comments to EPA. Submit your written comments, identified by Docket ID No. SFUND–2004–0001, by one of the following methods:

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

2. *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.

3. *E-mail:* Comments may be sent by electronic mail to *superfund.docket@epa.gov,* /Attention Docket ID No. SFUND–2004–0001.

4. *Mail:* Send comments to the OSWER Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. SFUND–2004–0001. 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.

5. *Hand Delivery:* Deliver your comments to the EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave. NW., Washington, DC, Attention Docket ID No. SFUND–2004–0001. 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. SFUND–2004–0001. 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).

Dated: August 20, 2004.

**Linda L. Garczynski,**

*Acting Director, Office of Brownfields Cleanup and Redevelopment.*

[FR Doc. 04–19430 Filed 8–25–04; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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United States-Morocco Free Trade Agreement Implementation Act (Aug. 17, 2004; 118 Stat. 1103)

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