10–27–04 Wednesday
Vol. 69 No. 207 Oct. 27, 2004

Pages 62553–62802

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 69 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

What's NEW!

Regulations.gov, the award-winning Federal eRulemaking Portal

Regulations.gov is the one-stop U.S. Government web site that makes it easy to participate in the regulatory process.

Try this fast and reliable resource to find all rules published in the *Federal Register* that are currently open for public comment. Submit comments to agencies by filling out a simple web form, or use available email addresses and web sites.

The Regulations.gov e-democracy initiative is brought to you by NARA, GPO, EPA and their eRulemaking partners.

Visit the web site at: **http://www.regulations.gov**

Contents

Federal Register

Vol. 69, No. 207

Wednesday, October 27, 2004

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
7837.....62801

Administrative Orders:
Presidential
Determinations:
No. 2005-01 of
October 7, 2004.....62793
No. 2005-02 of
October 14, 2004.....62795
No. 2005-03 of
October 16, 2004.....62797

12 CFR
210.....62553
701.....62561
723.....62563

14 CFR
25.....62778
39 (4 documents).....62566, 62567, 62570, 62571
121.....62778

Proposed Rules:
39 (4 documents).....62623, 62625, 62627, 62629

26 CFR

Proposed Rules:
1.....62631
25.....62631

29 CFR

Proposed Rules:
2700.....62632
2701.....62632
2702.....62632
2704.....62632

33 CFR
100.....62574
165.....62574

39 CFR
111.....62578

Proposed Rules:
111.....62635

40 CFR
52 (5 documents).....62583, 62585, 62588, 62589, 62591
81.....62591
180 (2 documents).....62596, 62602

Proposed Rules:
52 (3 documents).....62636, 62637
81.....62637

47 CFR
15.....62615
74.....62615
78.....62615
101.....62615

Rules and Regulations

Federal Register
Vol. 69, No. 207
Wednesday, October 27, 2004

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Regulation J; Docket No. R–1202]

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors is publishing final amendments to Regulation J to provide for the rights and obligations of banks and Reserve Banks relating to electronic items handled by Reserve Banks. These amendments ensure that Regulation J covers the electronic check processing service options that the Reserve Banks will offer when the Check Clearing for the 21st Century Act takes effect on October 28, 2004. The final amendments also clarify some existing provisions of Regulation J.

DATES: This rule is effective on October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Adrianne G. Threatt, Counsel (202–452–3554), Legal Division; or Jack K. Walton, II, Assistant Director (202–452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202–452–3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION:

Background

Regulation J governs the collection of checks and other items by the Reserve Banks. Under existing Regulation J, the term ''item'' is understood to mean a negotiable instrument in paper form. Regulation J includes the warranties and indemnities that senders and Reserve Banks give for items that are collected or returned through the Federal Reserve Banks. Regulation J also describes the Reserve Banks' security interest in the assets of banks for which they collect items, as well as the amounts and methods by which the Reserve Banks may recover for their losses associated with collection and return of items. Regulation J authorizes the Reserve Banks to issue operating circulars governing the details of the collection of checks and other items and provides that such operating circulars have binding effect on all persons interested in an item handled by a Reserve Bank. Although the Reserve Banks in some cases handle items electronically today, the rights and obligations associated with electronic items are not set forth in Regulation J but rather are addressed by the Reserve Banks' Operating Circular No. 3, ''Collection of Cash Items and Returned Checks'' (OC 3).

The Check 21 Act and the Board's implementing amendments, contained in a new subpart D of Regulation CC, take effect on October 28, 2004.[1] These provisions are designed to facilitate banks' ability to process checks electronically. Today, a bank that accepts a check for collection must collect the original paper check unless the bank to which it sends the check has agreed to receive the check electronically. It is difficult, if not impossible, for a bank to obtain electronic check exchange agreements with all other banks to which it sends checks. If the paying bank demands presentment of the original check, the banks in the collection process for that check must process the original check even if their agreements with one another would allow them to handle the check electronically among themselves. The Check 21 Act addresses this inefficiency by allowing banks to create a new negotiable instrument called a ''substitute check'' that, when properly prepared, is the legal equivalent of the original check. Under the Check 21 Act, banks can remove the original check from the collection process, handle the check electronically by agreement, and later create a legally equivalent substitute check when and where an original check is required.

A bank that creates a substitute check is known as the ''reconverting bank.'' The reconverting bank makes two new warranties and an indemnity designed to protect substitute check recipients against losses associated with the check substitution process. These warranties are made, in turn, by each bank that subsequently handles the substitute check, whether it remains in paper form or is converted to electronic form.[2] Under this chain of warranties and indemnities, losses generally will be borne under the Check 21 Act by the reconverting bank, although the Act contains comparative negligence provisions to protect the reconverting bank from losses attributable to another person's fault.

The Check 21 Act allocates losses only among parties that handle a substitute check. However, it is possible that the problem giving rise to liability under the Check 21 Act was the fault of the bank that sent electronic information derived directly from the original check to the reconverting bank. For example, the bank that converted the original check to electronic form and sent it to the reconverting bank might have taken a poor image of the original check, which would preclude the reconverting bank from creating a legally equivalent substitute check and cause it to breach a substitute check warranty. The Check 21 Act does not by its terms give the reconverting bank recourse against its sender in that case. However, the reconverting bank may, by agreement, further allocate losses that it incurs under the Check 21 Act. For example, a bank that plans to create substitute checks could require the bank from which it electronically receives the original check to warrant the accuracy of the image of the original check.

After the Check 21 Act takes effect on October 28, 2004, the Reserve Banks will offer a wider variety of electronic check processing services, including accepting items in electronic form for collection and return. In some cases, an electronic item received by a Reserve

[1] *See* 69 FR 47290, Aug. 4, 2004. The Reserve Banks will amend OC 3 to address the details of their new check processing services following the Board's adoption of final amendments to Regulation J.

[2] Regulation CC provides that the warranties and indemnity flow with the transfer, presentment, or return of a substitute check ''or a paper or electronic representation of a substitute check.'' In this preamble, the term ''substitute check'' includes a paper or electronic representation of that substitute check, unless the context indicates that the reference is to the actual substitute check.

Bank will be an electronic representation of a substitute check for which the Reserve Banks will receive Check 21 Act warranty and indemnity protections from the sender and give those protections to subsequent transferees. However, the Reserve Banks anticipate that most of the items that they will receive in electronic form will be derived directly from the original check and thus will not be subject to the substitute check warranties and indemnity. (Unless specifically indicated otherwise, in the remainder of this preamble the term ''electronic item'' refers to an electronic item derived directly from the original check and does not refer to an electronic representation of a substitute check.) A Reserve Bank in some cases will use an electronic item to create a substitute check for which it must make the Check 21 Act warranties and indemnity. In other cases, the Reserve Bank may transfer or present the electronic item to a subsequent party that creates a substitute check.

Overview of Proposed Rule

The Board in June 2004 published proposed amendments to subpart A of Regulation J that were designed primarily to bring the Reserve Banks' handling of electronic items within the coverage of Regulation J, acknowledge the requirements of Regulation CC for substitute checks, and add new warranties and an indemnity that would apply when a sender sends an electronic item that is not subject to subpart D Regulation CC.[3] The proposed supplemental warranties and indemnity were intended to allow a recipient of an electronic item to pass back subsequent Check 21-related liability to the sender of that item where appropriate. The proposed supplemental warranties and indemnity therefore closely tracked the warranties and indemnity in subpart D of Regulation CC.

The other proposed amendments generally were technical in nature, such as supplementing existing definitions in Regulation J to correspond to definitional changes in Regulation CC and reorganizing and revising some existing regulatory text for greater clarity.

Overview of Comments on the Proposed Rule

The Board received comments on the proposed rule from 41 commenters, including 32 depository institutions and organizations representing depository institutions, six consumers and consumer groups, and three other organizations. The vast majority of commenters agreed that it was appropriate for Regulation J to contain a Check 21-like liability structure for electronic items that would allow Reserve Banks and other recipients of such items to pass back liabilities subsequently incurred under the Check 21 Act. However, commenters expressed concerns about specific aspects of the Board's proposed liability structure and made suggestions for how the Board could make that structure more equitable. Commenters also encouraged the Board to clarify that the new supplemental warranties and indemnity for electronic items would not alter the liability structure for substitute checks in the Check 21 Act and subpart D of Regulation CC. Specific substantive comments are discussed in more detail in the Section-by-Section Analysis.

Overview of the Board's Final Rule

The Board's final rule is similar to the rule that the Board proposed for comment. However, the Board has made a number of clarifying changes in response to the comments received and its own further analysis. These changes include adjustments to the definition of electronic item and to the liability structure applicable to an electronic item. These changes also state more directly that Regulation J does not alter the liability structure for substitute checks and paper and electronic representations of substitute checks set forth in Regulation CC. Moreover, the final rule provides that a sender of an electronic item makes the Uniform Commercial Code (U.C.C.) transfer warranties for an electronic item as if it were an item subject to the U.C.C. and makes the warranties of § 229.34 of Regulation CC as if the electronic item were a check subject to that section.

Section-by-Section Analysis

This section-by-section analysis focuses on the provisions of the existing or proposed rule that the Board changed or that were the subject of comments or the Board's own further analysis. For all other provisions, the Board's reasoning in the section-by-section analysis of the Board's proposed rule is incorporated by reference.

Section 210.2 Definitions

A. In General. One commenter suggested that the final rule should use the terms ''person'' and ''party'' in a manner consistent with the U.C.C.'s usage of those terms. The Board agrees that Regulation J's word usage should be consistent with the U.C.C. and has made revisions accordingly.

Some commenters asked the Board to clarify that when Regulation J uses the term ''handle'' with respect to a substitute check, that term refers to a transfer, presentment, or return of a substitute check. These commenters sought clarification that by ''handling'' a substitute check under Regulation J, the sender would make the substitute check warranties and indemnity described in subpart D of Regulation CC. Regulation J generally uses the term ''handle'' to refer to a transfer, presentment, or return, as the context requires. However, the substitute check warranties and indemnity are made directly under Regulation CC according to the terms of that regulation, which Regulation J does not alter. The Board's amendments to §§ 210.5 and 210.6, which are discussed in detail in the analysis of those sections, further clarify the interaction between Regulation CC and Regulation J.

B. Item and electronic item. To bring electronic items under the coverage of Regulation J, the Board proposed to amend Regulation J's definition of the term ''item'' to include an electronic item. Some commenters requested that the Board ensure that its definition of the term ''item'' would not affect the U.C.C.'s definition of that term. All the definitions in § 210.2 of Regulation J are prefaced by the phrase ''as used in this subpart'' and do not apply to any other law or regulation. Thus, the modification of the definition of the term ''item'' for purposes of Regulation J does not alter the meaning of that term under the U.C.C or the meaning of the term ''check'' under Regulation CC.[4]

The proposed rule stated that an electronic image of a paper item ''*together with* information describing that item'' was an electronic item (emphasis added). The Reserve Banks in some cases will handle in separate files the image portion of an electronic item and the information portion of the item, which would include a record of the magnetic ink character recognition (MICR) line data from the paper item and of any indorsements applied to the item electronically. The final rule therefore changes the phrase ''together with'' to ''and.'' The Board also has amended the electronic item definition so that electronic check-related information will not constitute an electronic item unless it is the type of electronic file that a Reserve Bank has

[3] 69 FR 34086, June 18, 2004.

[4] One commenter requested clarification about the application of Regulation E to electronic items. Because Regulation E explicitly excludes transactions originated by check from its coverage, an electronic item under Regulation J does not include an electronic fund transfer subject to Regulation E.

agreed to handle as an item. This revision addresses the fact that some check-related information that the Reserve Banks handle electronically is for information purposes only and is not intended for collection as an item or reconversion to a substitute check.

Section 210.3 General Provisions

Some commenters recommended that the Board clarify in § 210.3(f) that nothing in Regulation J alters the liabilities of persons interested in a substitute check or a paper or electronic representation of a substitute check, as established by the Check 21 Act and subpart D of Regulation CC. As discussed in more detail in the analysis of §§ 210.5 and 210.6, the amendments to Regulation J are not intended to alter the application of the liability provisions of subpart D of Regulation CC. Although the Board has not amended § 210.3 as suggested, the final rule makes the clarification requested by commenters in several other places by indicating that Reserve Banks can be held liable under subpart D (*see, e.g.,* §§ 210.6(a)(2)(iii), 210.6(c), 210.12(e)(2)(iii)), by specifically acknowledging the applicability of Regulation CC to items collected through Reserve Banks (*see, e.g.,* §§ 210.5(a)(5)(i)(C), 210.5(b), 210.12(c)(5)(i)(C), and 210.12(d)), and by stating that nothing in Regulation J alters the liability that senders of substitute checks (or representations thereof) bear under subpart D (*see, e.g.,* §§ 210.5(a)(5)(ii)(B), 210.12(c)(5)(ii)(B)).

Section 210.4 Sending Items to Reserve Banks

The Board proposed to amend § 210.4(b)(1) to clarify that the Administrative Reserve Bank of the paying bank was deemed to have handled an item sent to a Reserve Bank for collection. On further reflection, the Board has deemed that this clarification is not necessary.

Section 210.5 Sender's Agreement; Recovery by Reserve Bank; Section 210.6 Status, Warranties and Liability of Reserve Bank

A. Addition of U.C.C. transfer warranties and Regulation CC § 229.34 warranties for all electronic items. The U.C.C. generally is understood to apply to items in paper form, although it allows a paying bank to agree to receive electronic presentment of an item. When presentment is made electronically by agreement, U.C.C. 4–110 treats the presentment notice as an item or a check as those terms are defined in the U.C.C., and the presenting bank therefore makes the presentment warranties in U.C.C. 4–208 to the paying bank. However, electronic items as defined in Regulation J that are handled for collection rather than presentment might not be items or checks under the U.C.C. and are not checks under Regulation CC. As a result, electronic items sent for collection might not be subject to the transfer warranties in U.C.C. 4–207 and are not subject the check collection warranties in § 229.34(c) of Regulation CC.

To ensure a full chain of U.C.C. transfer warranties and Regulation CC § 229.34(c) warranties for an item that a Reserve Bank receives or sends in electronic form, the Board's final rule adds a paragraph to § 210.5(a) that provides that by sending an electronic item a sender makes all the warranties set forth in and subject to the terms of U.C.C. 4–207 as if the electronic item were an item subject to the U.C.C. and makes the warranties set forth in § 229.34(c) of Regulation CC as if the electronic item were a check subject to that section. Section 210.6(b) contains corresponding Reserve Bank warranties. These new warranties apply to all electronic items, regardless of whether they are derived directly from an original check or from a substitute check. Because senders and Reserve Banks must make these new warranties for an electronic item subject to the terms of U.C.C. 4–207 and § 229.34(c) of Regulation CC, they must make these warranties to all the parties described in U.C.C. 4–207 and § 229.34(c) of Regulation CC.

B. Content of supplemental warranties for electronic items that are not representations of substitute checks. Under proposed § 210.5(a)(4)(i) and § 210.6(b)(3)(i), the sender of an electronic item would warrant, among other things, that the item ''accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated'' and ''replicates the MICR line of the original check, except for any changes required or permitted by part 229, subpart D of this chapter for substitute checks.'' Several commenters expressed concern about the use of the word ''replicate'' when describing the MICR-line content portion of the warranty. These commenters thought that the warranty should distinguish more clearly between the MICR line that appears in the image of the front of the original check and the separate MICR-line information that must accompany that image. These commenters also noted that the word ''replicate'' might not adequately convey the idea that, when creating the electronic item, the truncating bank would transfer the MICR-line information that appeared on the original check to a different format.

Several commenters concerned with the MICR-line component of the warranty also suggested that a sender of an electronic item should warrant that the electronic item contains a record of the MICR line as it appeared on the original check at the time of truncation. This suggestion, however, would mean that if the check contained a MICR-line strip that omitted information previously encoded on the original check, only the information contained on the strip would be needed to satisfy the warranty. These comments were submitted prior to the Board's issuance of the final rule amending Regulation CC to implement the Check 21 Act, which requires the substitute check to contain information in all fields of the MICR-line that were encoded on the original check prior to truncation.[5] The purpose of the MICR-line content warranty for an electronic item derived directly from an original check is to ensure that the electronic item contains all the information necessary for the recipient to create a substitute check that is the legal equivalent of the original check. The Board therefore believes that it is appropriate for a bank to warrant that electronic item contains all the information required for a substitute check.

To address the foregoing issues with respect to the MICR line portion of the warranties made for electronic items, §§ 210.5(a)(4)(i) and 210.6(b)(3)(i) of the final rule state that the sender warrants that ''the electronic image portion of the item accurately represents all of the information on the front and back of the original check as of the time that the original check is truncated'' and ''the information portion of the item contains a record of all MICR-line information required for a substitute check under § 229.2(aaa) of this chapter.''

C. Scope of recipients of warranties and indemnity for electronic items. Several commenters expressed concern that a Reserve Bank makes the warranties in existing and proposed § 210.6(b)(1) to a subsequent collecting bank, the paying bank, and any other payor, yet would make the new warranties and indemnity for electronic items in proposed § 210.6(b)(3) only to the bank to which the Reserve Bank transfers or presents the item. The Board notes that the scope of the supplemental warranties given by senders to Reserve Banks under § 210.5(a)(4) of the final rule is similarly limited. Commenters opined that the Reserve Banks should

[5] *See* 69 FR 47290, Aug. 4, 2004, at 47310 and 47318.

make the supplemental warranties and indemnity in § 210.6(b)(3) to the same parties that receive the warranties in § 210.6(b)(1).

Section 210.6(b)(1) generally restates existing warranties that Reserve Banks make under the U.C.C., which by the terms of that law flow to subsequent banks in the collection process. Proposed § 210.6(b)(3), by contrast, contains new warranties and an indemnity that Reserve Banks would not otherwise make under the U.C.C. or other law. The Board has retained the more limited scope of warrantees that receive the supplemental warranties for electronic items in § 210.6(b)(3).[6] A person that receives an electronic item derived directly from an original check from a person other than a Reserve Bank can further protect itself by an agreement with its sender.

D. Scope of sender and Reserve Bank warranties and indemnity for substitute checks and electronic items. To clarify the full range of warranties and indemnities that apply to items collected by Reserve Banks, the proposed rule listed the check collection warranties in § 229.34(c) of Regulation CC and the substitute check warranties and indemnity in subpart D of Regulation CC. The proposed amendments did not list other liability-related provisions of Regulation CC, such as the general liability provision and the interbank expedited recredit procedure that apply to substitute checks. Several commenters indicated that having a separate regulatory list of warranties and indemnities in Regulation J could cause confusion about how Regulation CC applies to checks handled by Reserve Banks or could suggest that the substitute check-related liability provisions that were not listed would not apply at all.

Many commenters expressed concern that proposed § 210.5(a)(5)(iv)-(v), by which the sender would agree to indemnify the Reserve Bank for losses associated with substitute checks (and representations thereof) and electronic items, respectively, inappropriately would allow a Reserve Bank to pass back losses for which the Reserve Bank was responsible. Commenters particularly were concerned that a Reserve Bank should not be allowed to pass back to a sender any losses that were attributable to the Reserve Bank's fault. The Board believes that the existing liability provisions of Regulation J, which hold a Reserve Bank liable for its own failure to use ordinary care, would have prevented this result. However, the Board notes that § 210.6(b)(3)(ii) of the proposed rule was overbroad because it would have required a Reserve Bank to indemnify the recipient for all its losses regardless of the recipient's fault.

Some of the commenters that were concerned about the equity of the liability structure in the proposed amendments suggested that a sender should not be liable for losses associated with electronic items that were later used to create substitute checks unless the sender breached one of the new warranties in Regulation J. Other commenters thought that any loss attributable to a problem with an electronic item should be passed back to the person that created the electronic item, regardless of whether that person or a subsequent bank in the collection process sent the electronic item to the Reserve Bank.[7]

The Board intends that Regulation J acknowledge, but in no way alter, a bank's responsibilities under subpart D of Regulation CC for substitute checks and under § 229.34(c) for all checks. The Board further intends the liability for losses associated with electronic items to parallel the liability structure for substitute checks in Regulation CC as closely as possible, both for senders and for Reserve Banks, and to prevent any person from passing back losses attributable to its own fault.[8] The Board therefore has significantly reorganized the warranty and indemnity provisions in §§ 210.5 and 210.6 to address the comments on these topics and clarify the rule.

The final rule omits the proposed provisions that restated the existing Regulation CC liability structure and incorporates into other paragraphs of §§ 210.5(a) and 210.6(b) the concept that the Regulation CC warranty and indemnity provisions apply according to their terms. Specifically, § 210.5(a)(5)(ii)(A) provides that senders of original checks are not liable for any amount that the Reserve Bank pays under subpart D of Regulation CC for a subsequently created substitute check or under § 210.6(b) for an electronic item, absent the sender's agreement to the contrary.[9] Section 210.5(a)(5)(ii)(B) provides that nothing in Regulation J alters the liability structure that applies to substitute checks and paper or electronic representations of substitute checks under subpart D of Regulation CC.[10] Section 210.5(a)(5)(ii)(C) provides that a sender of an electronic item is not liable for any amount a Reserve Bank pays under § 210.6(b)(3) or subpart D of Regulation CC that is attributable to the Reserve Bank's own lack of good faith or failure to exercise ordinary care. Section 210.6(b)(3)(ii)(B) contains substantially similar limitations to those in § 210.5(a)(5)(ii)(C) so that Reserve Banks that handle an electronic item also will not bear substitute check-related losses that are attributable to the fault of a subsequent person in the collection process. The final rule also specifically states that Reserve Banks are subject to subpart D of Regulation CC.

The Board has not, as requested by commenters, amended the indemnity provisions to hold a sender of an electronic item liable for a loss associated with a later substitute check only if the sender breached a Regulation J warranty. The indemnity in subpart D of Regulation CC covers a loss due to the receipt of a substitute check even in the absence of a warranty breach. For example, a substitute check that contains a complete and accurate image of the original check may be insufficient to prove a forgery claim because only the original check could be used for handwriting analysis. Subpart D of Regulation CC would allocate that loss to the reconverting bank. Sections 210.5(a)(5) and 210.6(b)(3) of the final rule further allocate that loss to the first party subject to Regulation J that sent the electronic item, which could be the bank that sent the electronic item to the Reserve Bank or the Reserve Bank itself.

[6] The supplemental warranties in Regulation J that apply the U.C.C. 4–207 warranties and Regulation CC § 229.34(c) warranties to electronic items are made to all the parties listed in the U.C.C. and § 229.34(c) of Regulation CC, respectively, which includes all subsequent collecting banks. The broader warrantee scope is appropriate for these supplemental warranties because they are designed to ensure that the existing U.C.C. and Regulation CC warranties continue to flow to all warrantees listed in those provisions regardless of whether the check changes form.

[7] One commenter suggested that a Reserve Bank should indemnify its transferee for losses associated with an electronic item that is never reconverted into a substitute check. However, the purpose of the new warranties and indemnity for electronic items in Regulation J is to allocate losses incurred when an electronic item that is not subject to the Check 21 Act is used to create a substitute check.

[8] Although the warranties and indemnity in §§ 229.52 and 229.53 are not by their terms fault-based, the amount for which an indemnifying bank ultimately is liable is governed by the comparative negligence provisions of §§ 229.53(b)(2) and 229.56(a)(3).

[9] A sender that designates certain original checks for accelerated processing could, for example, by the terms of an operating circular agree to indemnify the Reserve Bank for subsequent losses under subpart D of Regulation CC.

[10] Some commenters suggested that the sender of a substitute check should be required to indemnify a Reserve Bank only if the Reserve Bank subsequently transferred a substitute check. The Board notes that the loss allocation for substitute checks in §§ 229.52 and 229.53 of Regulation CC provide that, once a substitute check is created, the warranties and indemnity flow with that item and with any paper or electronic representation of it.

Thus, Regulation J places the loss with the bank whose choice to handle an item electronically necessitated the later creation of a substitute check.

The final rule also does not, as requested by commenters, allocate losses associated with an electronic item to a person that handled the item prior to the Reserve Bank's sender. The warranties and indemnity in existing and proposed Regulation J are first made by the sender of the item to a Reserve Bank because Regulation J only governs items that are collected by the Reserve Banks. The Board believes that allocating liability for any item in Regulation J to a person prior to the Reserve Bank's sender would be inappropriate, because that person may have no control over whether the item was handled by a Reserve Bank. However, a Reserve Bank's sender that received an electronic item from another person could protect itself through its agreement with that person.

E. Procedures for claims against Reserve Banks. Several commenters opined that the standard for accrual of a claim for an electronic item that is not a representation of a substitute check in § 210.6(d)(2) should be the same as the accrual standard for substitute check claims in § 229.56(c) of Regulation CC. This is the result intended by the Board, and proposed § 210.6(d)(2) reached this result by using language identical to that in § 229.56(c). The final rule therefore retains the proposed accrual language.

Some commenters expressed concern that the statement in § 210.6(d)(3) of the proposed rule that paragraph (d) ''does not lengthen'' the time for bringing a claim under Regulation CC implied that paragraph (d) could shorten the otherwise applicable timeframe. The final rule therefore states that § 210.6(d) ''does not alter'' the time periods for bringing actions under the sections of Regulation CC that it references.

Section 210.12

Section 210.12 sets forth a liability structure for returned checks that is substantially similar to the liability structure in §§ 210.5 and 210.6 that applies to items handled for forward collection. The proposed amendments to § 210.12 therefore closely paralleled the proposed amendments to corresponding portions of §§ 210.5 and 210.6. Accordingly, the final amendments to § 210.12 are identical or substantially similar to those discussed in the analysis §§ 210.5 and 210.6.

Regulatory Flexibility Act

The Board has reviewed the final rule's impact on small banks in accordance with the final regulatory flexibility analysis requirements in the Regulatory Flexibility Act (12 U.S.C. 604).

Under section 3 of the Small Business Act, as implemented at 13 CFR part 121, subpart A, a bank is considered a ''small entity'' or ''small bank'' for purposes of the Regulatory Flexibility Act if it has $150 million or less in assets. Based on June 2004 call report data, the Board estimates that there are approximately 14,221 depository institutions with assets of $150 million or less. The final amendments will apply to all depository institutions, regardless of size, that obtain check collection services from a Reserve Bank.

As discussed in the preceding sections, the final amendments are necessary to facilitate the electronic collection of checks by Reserve Banks as contemplated by the Check 21 Act. Commenters generally supported the proposed amendments and did not submit comments on the Regulatory Flexibility Act section. The primary effect of the final amendments is to provide that each bank that sends an electronic item to a Reserve Bank for forward collection or return would make warranties and an indemnity for that item. The new warranties and indemnity in Regulation J are similar to the warranties and indemnity that apply to paper checks under existing Regulation J and other law. Although the Reserve Banks could protect themselves with respect to electronic items by agreement, the Board believes that it is appropriate at this time to bring electronic items within the coverage of Regulation J. The final amendments generally apply only to those banks that choose to send items to Reserve Banks electronically. These amendments do not require any bank to change the form in which it submits checks, nor do they require any bank to submit reports, maintain records, or provide notices or disclosures.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no new collections of information and proposes no substantive changes to existing collections of information pursuant to the Paperwork Reduction Act.

Administrative Procedure Act

The Board has found good cause that the final amendments should take effect on October 28, 2004. The Check 21 Act takes effect on that date and is designed to facilitate the electronic processing of checks. Without a warranty and indemnity structure for electronic items derived directly from original checks, such as that in the final amendments, the Reserve Banks cannot offer a wider range of electronic check processing services as anticipated by the Check 21 Act. To maximize banks' ability to use the Federal Reserve's new electronic check processing services facilitated by the Check 21 Act, the effective date of Regulation J should coincide with the effective date of the Act. Moreover, the Board notes that no bank is required to change its check processing procedures as a result of the rule and that the new provisions of the final rule generally apply only to those banks that choose to send items electronically to the Reserve Banks. The final rule also does not impose any reporting, recordkeeping, or reporting requirements for any bank. Accordingly, having the amendments take effect on October 28 should provide benefits to those banks that want to rely on the Check 21 Act to process checks electronically without any countervailing disadvantages to those or any other banks. For the foregoing reasons, the Board has determined that good cause exists for making the rule effective on October 28, 2004, to coincide with the effective date of the Check 21 Act.

12 CFR Chapter II

List of Subjects in 12 CFR Part 210

Banks, Banking.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 210 to read as follows:

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS AND FUNDS TRANSFERS THROUGH FEDWIRE (REGULATION J)

■ 1. The authority citation for part 210 is revised to read as follows:

Authority: 12 U.S.C. 248(i), (j), and (o), 342, 360, 464, 4001–4010, and 5001–5018.

§ 210.1 [Amended]

■ 2. In § 210.1, add the phrase ''the Check Clearing for the 21st Century Act (12 U.S.C. 5001–5018);'' between the phrases ''the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*);'' and ''and other laws'' in the first sentence.

§ 210.2 [Amended]

■ 3. In § 210.2 make the following changes:

■ (A) Revise the last sentence of paragraph (h);
■ (B) Revise paragraphs (i), (l)(3), and (n);
■ (C) Remove the undesignated paragraph after paragraph (o);
■ (D) Revise paragraph (r); and
■ (E) Add a new paragraph (s).

The revisions and addition read as follows:

§ 210.2 Definitions.

* * * * *

(h) * * * *Check as defined in 12 CFR 229.2(k)* means an item defined as a check in 12 CFR 229.2(k) for purposes of subparts C and D of part 229.

(i) *Item and electronic item.*

(1) Item means—

(i) An instrument or a promise or order to pay money, whether negotiable or not, that is—

(A) Payable in a Federal Reserve District [1] (District);

(B) Sent by a sender to a Reserve Bank for handling under this subpart; and

(C) Collectible in funds acceptable to the Reserve Bank of the District in which the instrument is payable; and

(ii) An electronic image of an item described in paragraph (i)(1)(i) of this section, and information describing that item, that a Reserve Bank agrees to handle as an item pursuant to an operating circular.

(2) *Electronic item* means an item described in paragraph (i)(1)(ii) of this section.

Note: Unless otherwise indicated, *item* includes both a cash and a noncash item, and includes a returned check sent by a paying or returning bank. *Item* does not include a check that cannot be collected at par, or a *payment order* as defined in § 210.26(i) and handled under subpart B of this part.

* * * * *

(l) * * *

(3) The bank whose routing number appears on a check in the MICR line or in fractional form (or in the MICR-line information that accompanies an electronic item) and to which the check is sent for payment or collection.

* * * * *

(n) *Sender* means any of the following entities that sends an item to a Reserve Bank for forward collection—

(1) A *depository institution*, as defined in section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b));

(2) A *clearing institution,* defined as—

(i) An institution that is not a depository institution but that maintains with a Reserve Bank the balance referred to in the first paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342); or

(ii) A corporation that maintains an account with a Reserve Bank in conformity with § 211.4 of this chapter (Regulation K);

(3) Another Reserve Bank;

(4) An *international organization* for which a Reserve Bank is empowered to act as depositary or fiscal agent and maintains an account;

(5) A *foreign correspondent,* defined as any of the following entities for which a Reserve Bank maintains an account: a foreign bank or banker, a foreign state as defined in section 25(b) of the Federal Reserve Act (12 U.S.C. 632), or a foreign correspondent or agency referred to in section 14(e) of that act (12 U.S.C. 358); or

(6) A branch or agency of a foreign bank maintaining reserves under section 7 of the International Banking Act of 1978 (12 U.S.C. 347d, 3105).

* * * * *

(r) *Uniform Commercial Code* and *U.C.C.* mean the Uniform Commercial Code as adopted in a state.

(s) *Terms not defined in this section.* Unless the context otherwise requires—

(1) The terms not defined herein have the meanings set forth in § 229.2 of this chapter applicable to subpart C or subpart D of part 229 of this chapter, as appropriate; and

(2) The terms not defined herein or in § 229.2 of this chapter have the meanings set forth in the Uniform Commercial Code.

§ 210.3 [Amended]

■ 4. In § 210.3(b) remove the phrase ''subpart C'' and add the phrase ''subparts C and D'' in its place.

§ 210.4 [Amended]

■ 5. In paragraph 210.4(b)(2), remove the word ''party'' and add the word ''person'' in its place.

§ 210.5 [Amended]

■ 6. In § 210.5 make the following changes:
■ (A) Revise paragraph (a);
■ (B) Redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively and add a new paragraph (b);
■ (C) Revise newly designated paragraph (c)(3);
■ (D) In the first sentence of newly designated paragraph (d)(1), remove the phrase ''paragraph (b)'' and add the phrase ''paragraph (c)'' in its place;
■ (E) Redesignate the last sentence of newly designated paragraph (d)(2) as paragraph (d)(3); in newly designated paragraphs (d)(2) and (d)(3), remove the phrase ''paragraph (c)'' wherever it appears and add the phrase ''paragraph (d)'' in its place; and in newly designated paragraph (d)(3) remove the phrase ''paragraph (a)(3)'' and add the phrase ''paragraph (a)(5)'' in its place; and
■ (F) In the first sentence of newly designated paragraph (e), remove the phrase ''subpart C of'' between the word ''or'' and the phrase ''part 229.''

The revisions and addition read as follows:

§ 210.5 Sender's agreement; recovery by Reserve Bank.

(a) *Sender's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the item bears an indorsement of the sender. By sending an item to a Reserve Bank, the sender does all of the following.

(1) *Authorization to handle item.* The sender authorizes the sender's administrative Reserve Bank and any other Reserve Bank or collecting bank to which the item is sent to handle the item (and authorizes any Reserve Bank that handles settlement for the item to make accounting entries), subject to this subpart and to the Reserve Banks' operating circulars, and warrants its authority to give this authorization.

(2) *Warranties for all items.* The sender warrants to each Reserve Bank handling the item that—

(i) The sender is a person entitled to enforce the item or authorized to obtain payment of the item on behalf of a person entitled to enforce the item;

(ii) The item has not been altered; and

(iii) The item bears all indorsements applied by parties that previously handled the item, in paper or electronic form, for forward collection or return.

(3) *Warranties for all electronic items.* The sender makes all the warranties set forth in and subject to the terms of 4–207 of the U.C.C. for an electronic item as if it were an item subject to the U.C.C. and makes the warranties set forth in and subject to the terms of § 229.34(c) of this chapter for an electronic item as if it were a check subject to that section.

(4) *Warranties for electronic items that are not representations of substitute checks.* If an electronic item is not a representation of a substitute check, the sender of that item warrants to each Reserve Bank handling the item that—

(i) The electronic image portion of the item accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated; the information portion of the item contains a record of all MICR-line information required for a substitute check under

[1] For purposes of this subpart, the Virgin Islands and Puerto Rico are deemed to be in the Second District, and Guam, American Samoa, and the Northern Mariana Islands in the Twelfth District.

§ 229.2(aaa) of this chapter; and the item conforms to the technical standards for an electronic item set forth in an operating circular; and

(ii) No person will receive a transfer, presentment, or return of, or otherwise be charged for, the electronic item, the original item, or a paper or electronic representation of the original item such that the person will be asked to make payment based on an item it already has paid.

(5) *Sender's liability to Reserve Bank.* (i) Except as provided in paragraph (a)(5)(ii) of this section, the sender agrees to indemnify each Reserve Bank for any loss or expense sustained (including attorneys' fees and expenses of litigation) resulting from—

(A) The sender's lack of authority to make the warranty in paragraph (a)(1) of this section;

(B) Any action taken by the Reserve Bank within the scope of its authority in handling the item; or

(C) Any warranty or indemnity made by the Reserve Bank under § 210.6(b) of this subpart, part 229 of this chapter, or the U.C.C.

(ii) A sender's liability for warranties and indemnities that the Reserve Bank makes for a substitute check, a paper or electronic representation thereof, or any other electronic item is subject to the following conditions and limitations—

(A) A sender of an original check shall not be liable under paragraph (a)(5)(i) of this section for any amount that the Reserve Bank pays under subpart D of part 229 of this chapter or under § 210.6(b)(3) of this subpart, absent the sender's agreement to the contrary;

(B) Nothing in this subpart alters the liability of a sender of a substitute check or paper or electronic representation of a substitute check under subpart D of part 229 of this chapter; and

(C) A sender of an electronic item that is not a representation of a substitute check shall not be liable for any amount that the Reserve Bank pays under subpart D of part 229 of this chapter or § 210.6(b)(3)(ii) of this subpart that is attributable to the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

(b) *Sender's liability under other law.* Nothing in paragraph (a) of this section limits any warranty or indemnity by a sender (or a person that handled an item prior to the sender) arising under state law or regulation (such as the U.C.C.), other federal law or regulation (such as part 229 of this chapter), or an agreement with a Reserve Bank.

(c) * * *

(3) Any warranty or indemnity made by the Reserve Bank under section 210.6(b) of this subpart, part 229 of this chapter, or the U.C.C.,

* * * * *

§ 210.6 [Amended]

■ 7. In § 210.6 make the following changes:

■ (A) Revise paragraphs (a) and (b); and

■ (B) Redesignate paragraph (c) as paragraph (d), add a new paragraph (c), and revise newly designated paragraph (d).

The revisions and additions read as follows:

§ 210.6 Status, warranties, and liability of Reserve Banks.

(a)(1) *Status.* A Reserve Bank that handles an item shall act as agent or subagent of the owner with respect to the item. This agency terminates when a Reserve Bank receives final payment for the item in actually and finally collected funds, a Reserve Bank makes the proceeds available for use by the sender, and the time for commencing all actions against the Reserve Bank has expired.

(2) *Limitations on Reserve Bank liability.* A Reserve Bank shall not have or assume any liability with respect to an item or its proceeds except—

(i) For the Reserve Bank's own lack of good faith or failure to exercise ordinary care;

(ii) As provided in paragraph (b) of this section; and

(iii) As provided in subparts C and D of Regulation CC.

(3) *Reliance on routing designation appearing on item.* A Reserve Bank may present or send an item based on the routing number or other designation of a paying bank or nonbank payor appearing in any form on the item when the Reserve Bank receives it. A Reserve Bank shall not be responsible for any delay resulting from its acting on any designation, whether inscribed by magnetic ink or by other means, and whether or not the designation acted on is consistent with any other designation appearing on the item.

(b) *Warranties and liability.* The following provisions apply when a Reserve Bank presents or sends an item.

(1) *Warranties for all items.* The Reserve Bank warrants to a subsequent collecting bank and to the paying bank and any other payor that—

(i) The Reserve Bank is a person entitled to enforce the item (or is authorized to obtain payment of the item on behalf of a person that is either entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item);

(ii) The item has not been altered; and

(iii) The item bears all indorsements applied by parties that previously handled the item, in paper or electronic form, for forward collection or return.

(2) *Warranties for all electronic items.* The Reserve Bank makes all the warranties set forth in and subject to the terms of 4–207 of the U.C.C. for an electronic item as if it were an item subject to the U.C.C. and makes the warranties set forth in and subject to the terms of § 229.34(c) of this chapter for an electronic item as if it were a check subject to that section.

(3) *Warranties and indemnity for electronic items that are not representations of substitute checks.* (i) If the electronic item is not a representation of a substitute check, the Reserve Bank warrants to the bank to which it transfers or presents that item that—

(A) The electronic image portion of the item accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated; the information portion of the item contains a record of all MICR-line information required for a substitute check under § 229.2(aaa) of this chapter; and the item conforms to the technical standards for an electronic item set forth in an operating circular; and

(B) No person will receive a transfer, presentment, or return of, or otherwise be charged for, the electronic item, the original item, or a paper or electronic representation of the original item such that the person will be asked to make payment based on an item it already has paid.

(ii) If the item is an electronic item that is not a representation of a substitute check—

(A) Except as provided in paragraph (b)(3)(ii)(B) of this section, the Reserve Bank agrees to indemnify the bank to which it transfers or presents the electronic item (the recipient bank) for the amount of any losses that the recipient bank incurs under subpart D of part 229 of this chapter for an indemnity that the recipient bank was required to make under subpart D of part 229 of this chapter in connection with a substitute check later created from the electronic item.

(B) The Reserve Bank shall not be liable under paragraph (b)(3)(ii)(A) of this section for any amount that the recipient bank pays under subpart D of part 229 of this chapter that is attributable to the lack of good faith or failure to exercise ordinary care of the recipient bank or a person that handled the item, in any form, after the recipient bank.

(c) *Limitation on liability.* A Reserve Bank shall not have or assume any liability to the paying bank or other

payor, except as provided in paragraph (b) of this section, § 229.34(c) or subpart D of part 229 of this chapter, or for the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

(d) *Time for commencing action against Reserve Bank.* (1) A claim against a Reserve Bank for lack of good faith or failure to exercise ordinary care shall be barred unless the action on the claim is commenced within two years after the claim accrues. Such a claim accrues on the date when a Reserve Bank's alleged failure to exercise ordinary care or to act in good faith first results in damages to the claimant.

(2) A claim that arises under paragraph (b)(3) of this section shall be barred unless the action on the claim is commenced within one year after the claim accrues. Such a claim accrues as of the date on which the claimant first learns, or by which the claimant reasonably should have learned, of the facts and circumstances giving rise to the claim.

(3) This paragraph (d) does not alter the time limit for claims under section 229.38(g) of this chapter (which include claims for breach of warranty under § 229.34 of this chapter) or subpart D of part 229 of this chapter.

§ 210.12 [Amended]

■ 8. In § 210.12 make the following changes:

■ (A) In paragraph (b)(2), remove the word ''party'' and add the word ''person'' in its place;

■ (B) Revise paragraph (c);

■ (C) Redesignate paragraphs (d), (e), (f), (g), (h), and (i) as paragraphs (e), (f), (g), (h), (i), and (j), respectively, and add a new paragraph (d);

■ (D) Revise newly designated paragraphs (e) and (f)(3);

■ (E) In newly designated paragraph (g), remove the phrase ''paragraph (d)'' and add the phrase ''paragraph (e)'' in its place; remove the phrase ''paragraph (f)'' wherever it appears and add the phrase ''paragraph (g)'' in its place; and remove the phrase ''paragraph (c)(3)'' and add the phrase ''paragraph (c)(5)'' in its place.

The revisions and addition read as follows:

§ 210.12 Return of cash items and handling of returned checks.

* * * * *

(c) *Paying bank's and returning bank's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the returned check bears an indorsement of the paying bank or returning bank. By sending a returned check to a Reserve Bank, the paying bank or returning bank does all of the following.

(1) *Authorization to handled returned check.* The paying bank or returning bank authorizes the paying bank's or returning bank's administrative Reserve Bank, and any other Reserve Bank or returning bank to which the returned check is sent, to handle the returned check (and authorizes any Reserve Bank that handles settlement for the returned check to make accounting entries) subject to this subpart and to the Reserve Banks' operating circulars.

(2) *Warranties for all returned checks.* The paying bank or returning bank warrants to each Reserve Bank handling a returned check that the returned check bears all indorsements applied by parties that previously handled the returned check, in paper or electronic form, for forward collection or return.

(3) *Warranties for all returned checks that are electronic items.* A paying bank or returning bank that sends a returned check that is an electronic item makes the returning bank warranties set forth in and subject to the terms of § 229.34 of this chapter for the electronic item as if it were a check subject to that section.

(4) *Warranties for returned checks that are electronic items that are not representations of substitute checks.* If the returned check is an electronic item that is not a representation of a substitute check, the paying bank or returning bank warrants to each Reserve Bank handling the returned check that—

(i) The electronic image portion of the item accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated; the information portion of the item contains a record of all MICR-line information required for a substitute check under § 229.2(aaa) of this chapter; and the item conforms to the technical standards for an electronic item set forth in an operating circular; and

(ii) No person will receive a transfer, presentment, or return of, or otherwise be charged for, the electronic item, the original item, or a paper or electronic representation of the original item such that the person will be asked to make payment based on an item it already has paid.

(5) *Paying bank or returning bank's liability to Reserve Bank.* (i) Except as provided in paragraph (c)(5)(ii) of this section, a paying bank or returning bank agrees to indemnify each Reserve Bank for any loss or expense (including attorneys' fees and expenses of litigation) resulting from—

(A) The paying or returning bank's lack of authority to give the authorization in paragraph (c)(1) of this section;

(B) Any action taken by a Reserve Bank within the scope of its authority in handling the returned check; or

(C) Any warranty or indemnity made by the Reserve Bank under paragraph (e) of this section or part 229 of this chapter.

(ii) A paying bank's or returning bank's liability for warranties and indemnities that a Reserve Bank makes for a returned check that is a substitute check, a paper or electronic representation thereof, or any other electronic item is subject to the following conditions and limitations—

(A) A paying bank or returning bank that sent an original check shall not be liable for any amount that a Reserve Bank pays under subpart D of part 229 of this chapter or under § 210.12(e)(1)(iii) of this subpart, absent the paying bank's or returning bank's agreement to the contrary;

(B) Nothing in this subpart alters the liability under subpart D of part 229 of this chapter of a paying bank or returning bank that sent a substitute check or a paper or electronic representation of a substitute check; and

(C) A paying bank or returning bank that sent an electronic item that is not a representation of a substitute check shall not be liable under paragraph (c)(5)(i) of this section for any amount that the Reserve Bank pays under subpart D of part 229 of this chapter or paragraph (e)(1)(iii) of this section that is attributable to the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

(d) *Preservation of other warranties and indemnities.* Nothing in paragraph (c) of this section limits any warranty or indemnity by a returning bank or paying bank (or a person that handled an item prior to that bank) arising under state law or regulation (such as the U.C.C.), other federal law or regulation (such as part 229 of this chapter), or an agreement with a Reserve Bank.

(e) *Warranties by and liability of Reserve Bank.* (1) The following provisions apply when a Reserve Bank handles a returned check under this subpart.

(i) *Warranties for all items.* The Reserve Bank warrants to the bank to which it sends the returned check that the returned check bears all indorsements applied by parties that previously handled the returned check, in paper or electronic form, for forward collection or return.

(ii) *Warranties for all returned checks that are electronic items.* A Reserve Bank that sends a returned check that is an electronic item makes the returning

bank warranties set forth in and subject to the terms of § 229.34 of this chapter as if the electronic item were a check subject to that section.

(iii) *Warranties and indemnity for returned checks that are electronic items that are not representations of substitute checks.*

(A) If the returned check is an electronic item that is not a representation of a substitute check, the Reserve Bank warrants to the bank to which it sends the returned check that—

(*1*) The electronic image portion of the item accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated; the information portion of the item contains a record of all MICR-line information required for a substitute check under § 229.2(aaa) of this chapter; and the item conforms with the technical standards for an electronic item set forth in an operating circular; and

(*2*) No person will receive a transfer, presentment, or return of, or otherwise be charged for, the electronic item, the original item, or a paper or electronic representation of the original item such that the person will be asked to make payment based on an item it already has paid.

(B) If the returned check is an electronic item that is not a representation of a substitute check—

(*1*) Except as provided in paragraph (e)(1)(iii)(B)(*2*) of this section, the Reserve Bank agrees to indemnify the bank to which it sends the returned check (the recipient bank) for the amount of any losses that the bank incurs under subpart D of part 229 of this chapter for an indemnity that the bank was required to make under subpart D of part 229 of this chapter in connection with a substitute check later created from the returned check.

(*2*) A Reserve Bank shall not be liable under paragraph (e)(1)(iii)(B)(*1*) of this section for any amount that the recipient bank pays under subpart D of part 229 of this chapter that is attributable to the lack of good faith or failure to exercise ordinary care of the recipient bank or a person that handled the item, in any form, after the recipient bank.

(2) A Reserve Bank shall not have or assume any other liability to any person except—

(i) As provided in paragraph (e)(1) of this section;

(ii) For the Reserve Bank's own lack of good faith or failure to exercise ordinary care as provided in subpart C of part 229 of this chapter; or

(iii) As provided in subpart D of part 229 of this chapter.

(f) * * *

(3) Any warranty or indemnity made by the Reserve Bank under paragraph (e) of this section or part 229 of this chapter,

* * * * *

§ 210.13 [Amended]

■ 9. In § 210.13, remove the word ''party'' wherever it appears and add the word ''person'' in its place, and remove the citation ''§ 210.9(a)(5)'' and add the citation ''§ 210.9(b)(5)'' in its place.

By order of the Board of Governors of the Federal Reserve System, October 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–24049 Filed 10–26–04; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Change in Official or Senior Executive Officer in Credit Unions That Are Newly Chartered or Are in Troubled Condition

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its rule concerning the requirement that federally-insured credit unions that are newly chartered or troubled file notice with NCUA before adding or replacing a board or committee member or employing or changing the duties of a senior executive officer. The amendments clarify the relationship between the prior notice provision and the commencement of service provision, so as to eliminate any potential confusion. In addition, the amendments reorganize the requirements in the current rule to make it easier to understand.

DATES: This rule is effective on November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Division of Operations, Office of General Counsel, at telephone: (703) 518–6562.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2004, the NCUA Board requested comment on proposed changes to § 701.14 of its regulations, clarifying the procedures that newly chartered or troubled federally-insured credit unions must follow to obtain NCUA approval before adding or replacing board or committee members or changing the duties of a senior executive officer. 69 FR 39871 (July 1, 2004). The proposed amendments clarify the relationship between the prior notice provision and the commencement of service provision in the current rule to eliminate confusion and reorganize the requirements to make the rule easier to understand.

NCUA received comments regarding the proposed changes from two federal credit unions, two national credit union trade associations, one state credit union trade association and one state credit union supervisory association, for a total of six comments.

Summary of Comments

The comments were generally favorable and supportive of the amendments, and all but one commenter supported the efforts to clarify and reorganize the provisions of the rule. Two commenters supported the proposal as published without recommending any changes.

One commenter recommended that the revised rule include a specific reference to the role of the state supervisory authority (SSA) in cases involving state-chartered credit unions. The rule, however, implements authority in the Federal Credit Union Act specifically authorizing the NCUA to review and approve of the service of certain senior credit union officials and employees of federally-insured credit unions, including credit unions that are state-chartered. 12 U.S.C. 1790a. While the NCUA is the decision maker in these cases, the current rule does require a state-chartered, federally-insured credit union to provide a copy of the NCUA notice to its SSA. 12 CFR 701.14(d)(1). In addition, the Board notes that another provision of our regulations also requires NCUA to consult with the appropriate SSA and provide it with notice concerning NCUA's decision. 12 CFR 741.205. The Board has not adopted this recommendation to otherwise reference the role of SSAs.

Another commenter suggested that the rule provide that a request for approval of an official's or employee's service to be deemed complete unless the regional office specifically requires additional information within ten days of its receipt of the request.

The current rule provides that the appropriate NCUA regional office will notify the credit union within ten days of its receipt of the request for approval either that the request is complete or that additional information is required and the Board is not aware of any instances of problems with the current procedure. The final rule retains this provision. The rule already calls for the

regional office to advise the credit union about whether the request is complete and providing an automatic determination that an application is deemed complete within ten days could create confusion with the provision in the rule providing for automatic approval if a Regional Director fails to issue a written decision within thirty days. In addition, the suggested revision could, in fact, delay processing. A regional office may determine that it wants to provide an applicant with an opportunity to supplement a submission after performing an initial review. A credit union will generally be willing to provide additional information if it is able since failure to do so would likely result in the disapproval of its request.

One commenter suggested that NCUA exclude service by employees from coverage of the rule. This commenter contends that selection and oversight of employees should be the exclusive province of the board of directors, absent some indication that the board has behaved unethically or is responsible for the credit union's unhealthy financial condition. The authority in the FCU Act for this rule specifically addresses senior executive employees as well as board and committee members. 12 U.S.C. 1790a(a). Senior executives are directly involved in and are responsible for the day-to-day operation of a credit union, and the Board believes their competence is as critical as that of the elected officers and board members. Accordingly, the Board has not adopted this recommended change.

One commenter noted its opposition to the proposal, contending that the current rule permits an officer or senior executive employee to commence service on an interim basis until such time as the credit union is notified in writing of NCUA's determination to disapprove such service. The commenter has mistakenly characterized the current rule, which only permits such interim service if NCUA grants a waiver from the otherwise mandatory thirty-day notice. The proposed amendments preserve the ability of a credit union to seek a waiver from the advance notice requirements in those cases in which the circumstances may warrant service to begin immediately. The final rule clarifies any ambiguity in the current rule between the operation of the prior notice and commencement of service provisions in the rule. The final rule retains the waiver provisions that provide sufficient flexibility where circumstances warrant immediate service yet permits the regional offices to conduct the review contemplated by the Federal Credit Union Act.

Final Rule

In view of the comments, NCUA is adopting the proposed amendments as a final rule without change.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The amendment clarifies the relationship between the waiver of prior notice provision and the temporary service provision, so as to eliminate any potential confusion. The NCUA has determined and certifies that this amendment will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that this amendment would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). NCUA currently has OMB clearance for § 701.14's collection requirements (OMB No. 3133–0121).

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The amendment will apply to all federally-insured credit unions. NCUA has determined that the amendment will not have a substantial direct effect on the States, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this amendment does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this amendment will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Credit unions, Senior executive officials.

By the National Credit Union Administration Board on October 21, 2004.

Mary Rupp,

Secretary of the Board.

■ Accordingly, the National Credit Union Administration amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

■ 2. Amend § 701.14 by removing paragraphs (c), (d) and (e), adding new paragraphs (c) and (d), and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or in troubled condition.

* * * * *

(c) *Procedures for Notice of Proposed Change in Official or Senior Executive Officer*—(1) *Prior Notice Requirement.* An insured credit union must give NCUA written notice at least 30 days before the effective date of any addition or replacement of a member of the board of directors or committee member or the employment or change in responsibilities of any individual to a position of senior executive officer if:

(i) The credit union has been chartered for less than two years; or

(ii) The credit union meets the definition of troubled condition in paragraph (b)(3) or (4) of this section.

(2) *Waiver of Prior Notice*—(i) *Waiver requests.* Parties may petition the appropriate Regional Director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest.

(ii) *Automatic waiver.* In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, the prior 30-day notice is automatically waived and the individual may immediately begin serving, provided that a complete notice is filed with the appropriate Regional Director within 48 hours of the election. If NCUA disapproves a director or credit committee member, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent on NCUA approval.

(iii) *Effect on disapproval authority.* A waiver does not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver or within 30 days of any subsequent required notice.

(3) *Filing procedures*—(i) *Where to file.* Notices will be filed with the appropriate Regional Director or, in the case of a corporate credit union, with the Director of the Office of Corporate Credit Unions. All references to Regional Director will, for corporate credit unions, mean the Director of Office of Corporate Credit Unions. State-chartered federally insured credit unions will also file a copy of the notice with their state supervisor.

(ii) *Contents.* The notice must contain information about the competence, experience, character, or integrity of the individual on whose behalf the notice is submitted. The Regional Director or his or her designee may require additional information. The information submitted must include the identity, personal history, business background, and experience of the individual, including material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which the individual is a party and any criminal indictment or conviction of the individual by a state or federal court. Each individual on whose behalf the notice is filed must attest to the validity of the information filed. At the option of the individual, the information may be forwarded to the Regional Director by the individual; however, in such cases, the credit union must file a notice to that effect.

(iii) *Processing.* Within ten calendar days after receiving the notice, the Regional Director will inform the credit union either that the notice is complete or that additional, specified information is needed and must be submitted within 30 calendar days. If the initial notice is complete, the Regional Director will issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice. If the initial notice is not complete, the Regional Director will issue a written decision within 30 calendar days of receipt of the original notice plus the amount of time the credit union takes to provide the requested additional information. If the additional information is not submitted within 30 calendar days of the Regional Director's request, the Regional Director may either disapprove the proposed individual or review the notice based on the information provided. If the credit union and the individual have submitted all requested information and the Regional Director has not issued a written decision within the applicable time period, the individual is approved.

(d) *Commencement of Service.* A proposed director, committee member, or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (c)(3)(iii) of this section, unless the NCUA disapproves the notice before the end of the period.

* * * * *

[FR Doc. 04–24002 Filed 10–26–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 723

Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending the collateral and security requirements of its member business loans (MBL) rule to enable credit unions subject to the rule to participate more fully in Small Business Administration (SBA) guaranteed loan programs.

DATES: This final rule is effective November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In 2003, NCUA amended its MBL rule and other rules related to business lending to enhance credit unions' ability to meet their members' business loans needs. 68 FR 56537 (October 1, 2003). In addition to comments on those amendments, NCUA received other suggestions on how it could improve the MBL rule. Among the most significant of these, commenters suggested NCUA amend the MBL rule ''so that it could be better aligned with lending programs offered by the Small Business Administration,'' such as the SBA's Basic 7(a) Loan Program. *Id.* at 56538. While NCUA recognized the merits of this suggestion, NCUA could not include it in the final rulemaking because it addressed issues outside the scope of the rulemaking. The Administrative Procedure Act generally prohibits Federal Government agencies from adopting rules without affording the opportunity for public comment. 5 U.S.C. 553. NCUA noted in the final rule, however, that it would review this suggestion to determine if it would be appropriate to act on it in a subsequent rulemaking.

As a result of that review, NCUA issued a proposed amendment to its MBL rule in June 2004 to permit credit unions to make SBA guaranteed loans under SBA's less restrictive lending requirements instead of under the more restrictive MBL rule's lending requirements. 69 FR 39873 (July 1, 2004). NCUA reviewed the SBA's loan programs in which credit unions can participate and determined they provide reasonable criteria for credit union participation and compliance within the bounds of safety and soundness. Additionally, these SBA programs are ideally suited to the mission of many credit unions to satisfy their members' business loans needs.

NCUA noted in the proposal that it recognizes NCUA's collateral and security requirements for MBLs, including construction and development loans, are generally more restrictive than those of the SBA's guaranteed loan programs and could hamper a credit union's ability to participate fully in SBA loan programs. As a result, the MBL rule's collateral and security requirements could prevent a credit union from making a particular loan that it could otherwise make under SBA's requirements. NCUA issued the proposal to provide relief from these more restrictive requirements and to

help enable credit unions to better serve their members' business loans needs.

B. Clarification of Existing Authority

NCUA discussed in the proposal that its Office of General Counsel in Legal Opinion 03–0911, dated May 20, 2004, clarified that NCUA's general lending rule and the Federal Credit Union Act (Act) permit federal credit unions (FCUs) to make MBLs under the terms of the SBA's guaranteed loan programs to the extent the terms and conditions under which the guarantee is provided are consistent with the requirements and limitations in the MBL rule. 12 CFR 701.21(e); 12 U.S.C. 1757(5)(A)(iii). Specifically, the opinion identified loan maturity limits, usury ceilings and prepayment penalties as terms of the SBA's guaranteed loan programs that an FCU could use in lieu of corresponding terms in NCUA's rules. The opinion stated, however, that a credit union could not rely on the exception for government guaranteed loan programs in NCUA's general lending rule and the Act with regard to collateral requirements for MBLs. 12 CFR 701.21(e); 12 U.S.C. 1757(5)(A)(iii). The opinion explained the MBL rule expressly sets collateral requirements for MBLs in the form of maximum loan-to-value ratios. The collateral requirements of the SBA's guaranteed loan programs are not consistent with those of the current MBL rule and, therefore, cannot be used. The proposed amendments to the MBL rule remove that impediment by exempting SBA guaranteed loans from the MBL rule's collateral requirements.

The proposal also noted that there could be circumstances where a business loan made under an SBA loan program would not be subject to the MBL rule. For example, a $40,000 business loan with an SBA guarantee to a member who has no other loans with the originating credit union would be too small to meet the definition of an MBL. Thus, the credit union in this example can rely on the authority provided by § 701.21(e) of NCUA's rules and make a business loan as part of an SBA loan program under all of the terms and conditions required or permitted by the program.

The MBL rule applies to all FCUs and to most federally-insured state credit unions (FISCUs). The proposal noted that a FISCU is exempt from the MBL rule only if, after August 7, 1998, the enactment of the Credit Union Membership Access Act (CUMAA), Public Law 105–21, its state supervisory authority (SSA) has adopted its own business loan rule, with the approval of the NCUA Board, for use instead of NCUA's MBL rule. The amendments regarding collateral requirements apply to all credit unions subject to the MBL rule, but it is important to note that legal opinion OGC 03–0911 applies only to FCUs, not FISCUs. FISCUs follow state law and regulation with respect to loan maturity, interest rate and prepayment penalties. For those issues, the relationship between any state law limitations and SBA's requirements should be determined by FISCUs in consultation with their state supervisory authority.

Finally, the proposal noted that, while NCUA believes many credit unions would greatly benefit from participating in SBA programs, NCUA also believes that programs of this type can create some additional safety and soundness concerns. For example, the loans being guaranteed are often riskier than other loans made by credit unions, and most credit unions would not make these kinds of loans without the security the SBA guarantees provide. NCUA noted it is aware that SBA guarantee programs generally place stringent requirements on participating lenders to comply with program requirements or face losing the guarantee. Accordingly, the proposal recommended that, before a credit union becomes a participating lender, it makes certain it fully understands the terms of the program and has procedures in place to assure its compliance with all program requirements.

C. Summary of Comments

NCUA received twenty-four comment letters regarding the proposed rule: four from FCUs, three from state credit unions, one from a private individual, seven from credit union trade organizations, one from a credit union service organization, one from a certified development company, one from a certified development company trade organization, one from a professional association representing state and territorial regulatory agencies, one from a bank, and four from banking trade organizations. All commenters supported the proposal except the bank and banking trade organizations.

Many of the commenters supporting the proposal also offered additional comments. For example, seven commenters asked NCUA to clarify that the proposal applies to SBA's Certified Development Company (504) Loan Program in addition to SBA's Basic 7(a) Loan Program. NCUA confirms the proposal applies to the 504 Loan Program and highlights that the proposal expressly states it applies to MBLs made *as part of* an SBA guaranteed loan program.

Four commenters suggested NCUA expand the scope of the proposal to include other government guaranteed loan programs. Three of them specifically named the Farm Service Agency or United States Department of Agriculture loan programs. Two of them suggested all government guaranteed loan programs be included. As noted in the preamble to the proposal, NCUA is willing to consider other government guaranteed loan programs as it becomes apparent there is demand for the program among credit unions.

Two commenters suggested NCUA reference Part 702 Prompt Corrective Action (PCA) in § 723.4 of the MBL rule to indicate PCA applies to member business lending. These commenters also stated it is burdensome for credit unions to have to track and report MBLs differently for different purposes. Specifically, they noted credit unions must do this when calculating net member business loan balances (NMBLB) under the MBL rule and risk-based net worth (RBNW) requirement under PCA. One of these commenters asked NCUA to explore ways of minimizing this burden. The other suggested using the NMBLB for purposes of calculating the RBNW requirement and permit credit unions to exclude MBLs that have been paid down below $50,000 from the calculation of the RBNW requirement. Part 702 is currently referenced in § 723.1 but not in § 723.4. NCUA is including a reference to part 702 in § 723.4 in the final rule. While NCUA recognizes there is some degree of inconvenience associated with tracking and reporting MBLs differently when calculating NMBLB and RBNW, NCUA believes the risks associated with making MBLs necessitate this form of accounting. Additionally, this system helps preserve the flexibility a credit union has to exclude MBLs from its NMBLB when they have been paid down below $50,000.

Three commenters asked NCUA to clarify how an SBA loan term could be both less restrictive than an NCUA requirement and still consistent with the MBL rule. This is possible when an SBA term is less restrictive than an NCUA requirement that is not specifically addressed in the MBL rule. For example, maturity limits are not specifically addressed in the MBL rule but are in the Act and elsewhere in NCUA's regulations.

The bank and four banking trade organizations opposed the proposal stating, among other things, it contradicts congressional intent to limit credit unions' ability to make MBLs. NCUA disagrees. The proposal does not

increase any congressional limits on the kind or amount of MBLs a credit union may make. Moreover, the legal authority allowing credit unions to make MBLs under the terms of an SBA guaranteed loan program is in the Act and, therefore, directly reflecting congressional intent. Finally, congressional representatives have urged NCUA to use its authority, conferred by Congress, to facilitate MBL lending and to refrain from imposing any limitations on credit unions in this context not explicitly called for by Congress in CUMAA. 68 FR 56537, 56538 (October 1, 2003).

Accordingly, except for technical amendments, NCUA adopts the proposed amendments to part 723 as final without change.

D. Net Member Business Loan Balance

The MBL rule uses the phrase ''net member business loan balance'' to describe the outstanding loan balance plus any unfunded commitments reduced by a number of factors. Section 723.10(h) uses the phrase ''outstanding member business loan balance'' instead of ''net member business loan balance.'' This inconsistent use of language was inadvertent and is corrected by amending § 723.10(h) to read ''net member business loan balance.''

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (those under ten million dollars in assets). This rule permits credit unions to more fully participate in SBA loan programs, without imposing any additional regulatory burden. The final rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 21, 2004.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR part 723 as follows:

PART 723—MEMBER BUSINESS LOANS

■ 1. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

■ 2. Revise the introductory sentence of § 723.3 to read as follows:

§ 723.3 What are the requirements for construction and development lending?

Except as provided in § 723.4 or unless your Regional Director grants a waiver, loans granted for the construction or development of commercial or residential property are subject to the following additional requirements.

* * * * *

■ 3. Revise § 723.4 to read as follows:

§ 723.4 What other regulations apply to member business lending?

(a) The provisions of § 701.21(a) through (g) and part 702 of this chapter apply to member business loans granted by credit unions to the extent they are consistent with this part. Except as required by part 741 of this chapter, federally insured State-chartered credit unions are not required to comply with the provisions of § 701.21(a) through (g) of this chapter.

(b) If a federal credit union makes a member business loan as part of a Small Business Administration guaranteed loan program with loan requirements that are less restrictive than those required by NCUA, then the federal credit union may follow the loan requirements of the relevant Small Business Administration guaranteed loan program to the extent they are consistent with this part. A federally insured State-chartered credit union that is subject to this part and makes a member business loan as part of a Small Business Administration guaranteed loan program with loan requirements that are less restrictive than those required by NCUA may follow the loan requirements of the relevant Small Business Administration guaranteed loan program to the extent they are consistent with this part if its state supervisory authority has determined that the credit union has authority to do so under State law.

(c) The collateral and security requirements of § 723.3 and § 723.7 do not apply to member business loans made as part of a Small Business Administration guaranteed loan program.

■ 4. Revise § 723.7(a) introductory text to read as follows:

§ 723.7 What are the collateral and security requirements?

(a) Except as provided in § 723.4 or unless your Regional Director grants a waiver, all member business loans, except those made under paragraphs (c), (d), and (e) of this section, must be secured by collateral as follows:

* * * * *

■ 5. Revise § 723.10(h) to read as follows:

§ 723.10 What waivers are available?

* * * * *

(h) Maximum aggregate net member business loan balance to any one

member or group of associated members under § 723.8.

[FR Doc. 04–24001 Filed 10–26–04; 8:45 am]
BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–91–AD; Amendment 39–13829; AD 2004–22–01]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes on Which Cargo Restraint Strap Assemblies Have Been Installed per Supplemental Type Certificate (STC) ST01004NY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to various transport category airplanes on which cargo restraint strap assemblies have been installed per STC ST01004NY. This amendment requires revising the airplane flight manual to include a procedure for discontinuing the use of certain cargo restraint strap assemblies installed per STC ST01004NY, if used as the only cargo restraint. This amendment also requires revising the airplane weight and balance manual to include the same procedure described previously. The actions specified by this AD are intended to prevent shifting or unrestrained cargo in the cargo compartment, which could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 1, 2004.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stuart Ave., suite 410, Westbury, New York 11590; telephone (516) 228–7323; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to various transport category airplanes on which cargo restraint strap assemblies have been installed per STC ST01004NY was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on August 4, 2004 (69 FR 47028). That action proposed to require revising the airplane flight manual (AFM) to include a procedure for discontinuing the use of certain cargo restraint strap assemblies installed per STC ST01004NY, if used as the only cargo restraint. That action also proposed to add a requirement to revise the airplane weight and balance manual (WBM) to include the same procedure described previously.

Comments

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

Conclusion

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

Cost Impact

There are approximately 1,150 transport category airplanes of the affected design in the worldwide fleet. We estimate that 735 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the AFM revision, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the AFM revision on U.S. operators is estimated to be $47,775, or $65 per airplane.

It will take approximately 1 work hour per airplane to accomplish the WBM revision, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the WBM revision on U.S. operators is estimated to be $47,775, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–22–01 Transport Category Airplanes: Amendment 39–13829. Docket 2002–NM–91–AD.

Applicability: The following transport category airplanes, certificated in any category, on which cargo restraint strap assemblies part number (P/N) 1519–MCIDS have been installed per Supplemental Type Certificate (STC) ST01004NY:

TABLE 1.—MANUFACTURERS/AIRPLANE MODELS

Manufacturer	Airplane model
Aerospatiale	ATR42 and ATR72 series airplanes.
Airbus	A300 B2 and A300 B4 series airplanes; A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes; A310, A320, A321, A330, and A340 series airplanes.
Boeing	707–100, 707–200, 707–100B, and 707–100B series airplanes; 727, 737, 747, 757, and 767 series airplanes.
British Aerospace	BAe 146 series airplanes and Avro 146–RJ series airplanes.
Fokker	F27 and F.28 series airplanes.
Lockheed	188A and 188C airplanes, and L–1011 series airplanes.
Maryland Air Industries, Inc.	F–27 series airplanes and FH–227 series airplanes.
McDonnell Douglas	DC–7, DC–7B, and DC–7C airplanes; DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; DC–8F–54 and DC–8F–55 airplanes; DC–8–61, DC–8–62, and DC–8–63 airplanes; DC–8–61F, DC–8–62F, and DC–8–63F airplanes; DC–8–71, DC–8–72, and DC–8–73 airplanes; DC–8–71F, DC–8–72F, and DC–8–73F airplanes; DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; MD–88 airplanes; MD–90–30 airplanes; 717–200 airplanes; DC–10–10 and DC–10–10F airplanes; DC–10–15 airplanes; DC–10–30 and DC–10–30F (KDC–10) airplanes; DC–10–40 and DC–10–40F airplanes; MD–10–10F and MD–10–30F airplanes; and MD–11 and MD–11F airplanes.

Compliance: Required as indicated, unless accomplished previously. To prevent shifting or unrestrained cargo in the cargo compartment, which could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane, accomplish the following:

Revisions to Airplane Flight Manual (AFM) and Weight and Balance Manual (WBM)

(a) Within 14 days after the effective date of this AD, revise the Limitations Section of the applicable AFM, and the cargo-loading procedures in the applicable WBM, to include the following information (this may be accomplished by inserting a copy of this AD into the AFM and the WBM):

''Discontinue the use of Supplemental Type Certificate (STC) ST01004NY to install Airline Container Manufacturing Company, Inc., cargo restraint straps, part number 1519–MCIDS, as the only means of securing cargo to Technical Standard Order (TSO) C90c/NAS3610 pallets. Such cargo restraint straps may continue to be used as supplemental restraints to secure cargo to TSO C90c/NAS3610 pallets, or to the cargo restraint fittings in the airplane floor, per the airplane manufacturer's weight and balance manuals, and within the strap rated load (5,000 lbs.).''

Note 1: If the statement in paragraph (a) of this AD has been incorporated into the general revisions of the AFM and the WBM, the general revisions may be incorporated into the AFM and the WBM, and the copy of this AD may then be removed from the AFM and the WBM.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Effective Date

(c) This amendment becomes effective on December 1, 2004.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24031 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19461; Directorate Identifier 2004–NM–169–AD; Amendment 39–13833; AD 2004–22–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 737–300, –400, and –500 series airplanes. This AD requires inspecting for discrepancies of the fuselage skin under the dorsal fin assembly, and repairing if necessary. This AD is prompted by a report of an 18-inch crack found in the fuselage skin area under the blade seals of the nose cap of the dorsal fin due to previous wear damage. We are issuing this AD to find and fix discrepancies of the fuselage skin, which could result in fatigue cracking due to cabin pressurization, and consequent rapid in-flight decompression of the airplane fuselage.

DATES: Effective November 12, 2004.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of November 12, 2004.

We must receive comments on this AD by December 27, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You can examine this information at the National

Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Examining the Dockets

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT:

Technical information: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

We have recently received a report indicating that wear of the fuselage skin was found between body stations 860 and 1006 on a Boeing Model 737–300 series airplane. Subsequently, an 18-inch crack developed in the area of the wear. Fuselage skin wear is attributed to the movement of the blade seals, which provide an aerodynamic seal between the dorsal fin fairing and the fuselage skin. Wear damage of the fuselage skin, if not found and fixed, could result in fatigue cracking due to cabin pressurization, and consequent rapid in-flight decompression of the airplane fuselage.

Relevant Service Information

We have reviewed Boeing Message Number 1–QXO35, dated October 13, 2004. The message describes procedures for repetitive detailed inspections of the fuselage skin under the dorsal fin assembly for discrepancies (*i.e.*, wear or cracking), and contacting Boeing for repair instructions. The message also describes procedures for accomplishing a detailed inspection for discrepancies if any repair doubler is installed.

We have also reviewed Boeing Service Bulletin 737–55–1057, Revision 1, dated July 22, 1999; specified in the Boeing message as an additional source of service information for accomplishing the actions. Part I of the Accomplishment Instructions of the service bulletin describes procedures for inspecting for discrepancies of the fuselage skin under the dorsal fin assembly. The discrepancies include chafing, wear damage, and lack of abrasion-resistant coating.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. Therefore, we are issuing this AD to find and fix discrepancies of the fuselage skin, which could result in fatigue cracking due to cabin pressurization, and consequent rapid in-flight decompression of the airplane fuselage. This AD requires accomplishing the actions specified in Boeing Message Number 1–QXO35, described previously, except as discussed under ''Difference Between the AD and Boeing Message Number 1–QXO35.''

Difference Between the AD and Boeing Message Number 1–QXO35

The message specifies that operators may contact the manufacturer for repair instructions, but this AD requires you to repair cracking in one of the following ways:

- Using a method that we approve; or
- Using data that meet the type certification basis of the airplane, and that have been approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make those findings.

Although the message recommends reporting any fuselage skin cracking found during the detailed inspections, this AD does not require that action.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19461; Directorate Identifier 2004–NM–169–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www/faa.gov/language* and *http://www.plainlanguage.gov*

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2004–22–05 Boeing: Amendment 39–13833. Docket No. FAA–2004–19461; Directorate Identifier 2004–NM–169–AD.

Effective Date

(a) This AD becomes effective November 12, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–300, –400, and –500 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of an 18-inch crack found in the fuselage skin area under the blade seals of the nose cap of the dorsal fin due to previous wear damage. We are issuing this AD to find and fix discrepancies of the fuselage skin, which could result in fatigue cracking due to cabin pressurization, and consequent rapid in-flight decompression of the airplane fuselage.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Repetitive Detailed Inspections

(f) For airplanes specified in either paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this AD: Accomplish a detailed inspection for discrepancies (wear or cracking) of the fuselage skin under the dorsal fin assembly by doing all the actions specified in Boeing Message Number 1–QXO35, dated October 13, 2004. Repeat the inspection thereafter at intervals not to exceed 9,000 flight cycles.

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

(1) For airplanes with line numbers 1001 through 2828 inclusive that have not been inspected as of the effective date of this AD, in accordance with Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect before the accumulation of 18,000 total flight cycles, or within 90 days after the effective date of this AD, whichever is later.

(2) For airplanes with line numbers 2829 through 3132 inclusive that are not included in the effectivity of Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect before the accumulation of 18,000 total flight cycles, or within 90 days after the effective date of this AD, whichever is later.

(3) For airplanes with line numbers 1001 through 2828 inclusive that have been inspected, but not repaired or modified as of the effective date of this AD, in accordance with Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect within 9,000 flight cycles after accomplishing the inspection, or within 90 days after the effective date of this AD, whichever is later.

(4) For airplanes with line numbers 1001 through 2828 inclusive that have been inspected and repaired or modified as of the effective date of this AD, in accordance with Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect within 18,000 flight cycles after accomplishing the repair or modification, or within 90 days after the effective date of this AD, whichever is later; and if a repair doubler is installed, before further flight, inspect the repair doubler for discrepancies (wear or cracking).

Note 2: Boeing Message Number 1–QXO35, dated October 13, 2004, references Part I of Boeing Service Bulletin 737–55–1057, Revision 1, dated July 22, 1999; as an additional source of service information for accomplishing the actions required by paragraph (f) of this AD.

Repair

(g) If any discrepancy (wear or cracking) is found during any inspection required by this AD, before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically refer to this AD.

Note 3: No terminating action is currently available for the repetitive inspections required by this AD.

Reporting Not Required

(h) Although Boeing Message Number 1–QXO35, dated October 13, 2004, specifies to report any fuselage skin cracking found during the detailed inspections, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Material Incorporated by Reference

(j) You must use Boeing Message Number 1–QXO35, dated October 13, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–23924 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18660; Directorate Identifier 2003–NM–161–AD; Amendment 39–13830; AD 2004–22–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model MU–300–10, 400, 400A, and 400T Series Airplanes; and Raytheon (Mitsubishi) Model Beech MU–300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon (Beech) Model MU–300–10, 400, 400A, and 400T series airplanes; and certain Raytheon (Mitsubishi) Model Beech MU–300 airplanes. This AD requires a one-time inspection of certain panels in the spoiler mixer bay for the presence of drain holes, and the addition of at least one new drain hole; and a one-time inspection for discrepancies of the sealant on the relief cutout on the aft pressure bulkhead, and on certain baffles; and corrective actions if necessary. This AD is prompted by a report of fuel leaking from components in the spoiler mixer bay of several Raytheon (Beech) Model 400A series airplanes. We are issuing this AD to prevent the accumulation of fuel and/or fuel vapor in the spoiler mixer bay and/or the aft fuselage compartment, which could result in a fire in the airplane.

DATES: This AD becomes effective December 1, 2004.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of December 1, 2004.

ADDRESSES: For service information identified in this AD, contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical information: Jeff Pretz, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Propulsion 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4153; fax (316) 946–4107.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

Examining the Docket

The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for certain Raytheon (Beech) Model MU–300–10, 400, 400A, and 400T series airplanes; and certain Raytheon (Mitsubishi) Model Beech MU–300 airplanes. The proposed AD was published in the **Federal Register** on July 22, 2004 (69 FR 43783), to require a one-time inspection of certain panels in the spoiler mixer bay for the presence of drain holes, and the addition of at least one new drain hole; and a one-time inspection for discrepancies of the sealant on the relief cutout on the aft pressure bulkhead, and on certain baffles; and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Clarification of Requirements in Paragraph (f) of the Final Rule

In paragraph (f) of the proposed AD we inadvertently referenced paragraphs (a)(1) and (a)(2) of the proposed AD; this is a typographical error. It was our intent to reference paragraphs (f)(1) and (f)(2). Paragraph (a) only references the comment due date and does not contain subparagraphs (1) and (2). Paragraph (f) of this final rule has been changed to correctly reference paragraphs (f)(1) and (f)(2) of this AD.

Costs of Compliance

This AD will affect about 673 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S. registered airplanes	Fleet cost
Inspections	1	$65	None	$65	610	$39,650
Drilling one drain hole	3	65	None	195	610	118,950

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2004–22–02 Raytheon Aircraft Company (Formerly Beech): Amendment 39–13830. Docket No. FAA–2004–18660; Directorate Identifier 2003–NM–161–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 1, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Raytheon (Beech) Model MU–300–10, 400, 400A, and 400T series airplanes; and Raytheon (Mitsubishi) Model Beech MU–300 airplanes; certificated in any category; as listed in Raytheon Service Bulletin SB 53–3486, dated June, 2003.

Unsafe Condition

(d) This AD was prompted by a report of fuel leaking from components in the spoiler mixer bay of several Raytheon (Beech) Model 400A series airplanes. We are issuing this AD to prevent the accumulation of fuel and/or fuel vapor in the spoiler mixer bay and/or the aft fuselage compartment, which could result in a fire in the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections and Corrective Actions

(f) Within 400 flight hours or 12 months after the effective date of this AD, whichever occurs first, do the actions in paragraphs (f)(1) and (f)(2) of this AD. Do all actions in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 53–3486, dated June 2003.

(1) Do a one-time general visual inspection of the spoiler mixer bay panels to determine the presence of drain holes. Before further flight after doing this inspection, drill at least one new drain hole, and any additional drain holes needed to make a total of five, at the places in each mixer bay panel specified in the service bulletin.

(2) Do a one-time general visual inspection for discrepancies of the sealant on the relief cutout on the aft pressure bulkhead, and of the small triangular-shaped baffles at left butt line (BL) 19.13 and right BL 10.43. Before further flight after doing this inspection, do any applicable corrective actions.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Parts Installation

(g) As of the effective date of this AD, no person may install on any airplane a spoiler mixer bay panel that has a part number listed in paragraph 3.B., ''Spares,'' of the Accomplishment Instructions of Raytheon Service Bulletin SB 53–3486, dated June 2003, unless the panel has been inspected and modified in accordance with paragraph (f)(1) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use Raytheon Service Bulletin SB 53–3486, dated June 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–23926 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–43–AD; Amendment 39–13835; AD 2004–22–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80C2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for GE CF6–80C2 turbofan engines with certain part number (P/N) high pressure turbine stage 2 nozzle guide vanes (HPT S2 NGVs) installed. This AD requires flex borescope inspections of HPT S2 NGVs installed in CF6–80C2 turbofan engines. This AD results from an uncontained engine failure due to HPT S2 NGV distress. We are issuing this AD to prevent blade separation from HPT S2 NGV distress, which could result in an uncontained engine failure.

DATES: This AD becomes effective December 1, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 1, 2004.

ADDRESSES: You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400; fax (513) 672–8422.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF6–80C2 turbofan engines with certain P/N HPT S2 NGVs installed. We published the proposed AD in the **Federal Register** on November 18, 2003 (68 FR 65000). That action proposed to require flex borescope inspections of certain P/N HPT S2 NGVs installed in CF6–80C2A1, –80C2A2, –80C2A3, –80C2A5, –80C2A5F, –80C2A8, –80C2B1, –80C2B1F, –80C2B2, –80C2B2F, –80C2B4, –80C2B4F, –80C2B5F, –80C2B6, –80C2B6F, –80C2B6FA, –80C2B7F, and –80C2D1F turbofan engines.

Examining the AD Docket: You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Requests To Limit the Required Inspections

Seven commenters ask that we limit the inspections required by the proposed AD to those parts listed in paragraph 1.C.(6) of GE Service Bulletin (SB) No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003, and that we revise Table 1 of the proposed AD to clarify the affected parts. The commenters state that those parts are the population recommended by the Manufacturer. We agree. We revised the applicability paragraph and Table 1 of the final rule for consistency with GE SB No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003. We also clarified the applicability of certain P/Ns in Table 1 by adding, ''Insert, P/N 1957M40G01 or P/N 1957M40G02, was installed during modification or repair,'' to those parts.

Six commenters ask that we limit the inspections required by the proposed AD to areas of critical stress such as the leading edge and outer fillet areas of the HPT nozzle airfoil as specified in Paragraph 3.B.(3) of GE SB No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003. The commenters feel that the proposed AD requires inspecting HPT blades as well as the nozzles, but that the cracking of the nozzles is the primary cause of failure of the HPT blade. The commenters feel that the proposed AD requires inspecting noncritical areas of nozzles. We agree. We revised paragraph (f) of the final rule to state ''Flex-borescope inspect the NGVs following paragraphs 3.B.(3) through 3.B.(5) of the * * *.'' We also deleted paragraphs (f)(1) through (f)(3)(ii) because they applied to HPT S2 NGVs that have not been repaired.

Requests for a Drawdown Allowance and Credit for Inspections Already Done

Five commenters ask that we provide an appropriate drawdown allowance for engines that have exceeded the threshold for the initial inspection, or provide credit for inspections that have already been done. The commenters feel that some engines might have already exceeded the initial limits. We agree that credit should be given for inspections that were performed before the effective date of the final rule, however, the proposed AD already provides for that credit by stating in paragraph (e) of the proposed AD ''You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done''. We changed paragraph (f)(2) of the final rule to state ''For engines listed in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD that are already beyond the initial inspection thresholds, inspect at or before accumulating an additional 200 CSO after the effective date of this AD.''

Request To Add CF6–80C2B8F to the Applicability

Two commenters ask us to add the CF6–80C2B8F engine model to the Applicability. The commenters state that the engine model was in the SB before we issued the NPRM. We agree. We have added the CF6–80C2B8F engine model to the Applicability of the final rule.

Request To Withdraw the NPRM

Two commenters ask us to withdraw the NPRM because they do not feel there is an issue with safety of flight. One commenter states that they have not removed any engines for this cause. The other commenter states that the engine fragments that exited the engine via holes in the low pressure turbine case were small and caused only minor damage to the airplane. We do not agree. We identified an unsafe condition after an uncontained engine failure. We provided a discussion of the cause of the uncontained engine failure and how the condition could affect other engines of the same type design. We are issuing this AD to prevent future occurrences of the same unsafe condition.

Request To Change Blade Failure to Blade Separation

One commenter asks us to change ''blade failure'' to ''blade separation.'' The commenter states this is consistent with using the term failure when the failure of the part is the primary cause. We agree. We have changed ''blade failure'' to ''blade separation'' in the final rule.

Request To Change CSO to CSN

One commenter asks us to state the inspection compliance times for new nozzles in paragraph (f)(2)(i) through (iii) in terms of ''CSN.'' The commenter feels this will clarify the requirements. We agree that the change would have clarified the requirements of the original NPRM. However, based on previous comments, the final rule will apply only to repaired or modified nozzles and the paragraphs that the commenter asks us to change will not be included in the final rule.

Requests To Limit Reinspection Requirements

Two commenters ask us to limit the reinspection requirements in paragraph (g) for the outer fillet to Figure 5, sheets 1 and 2 of GE SB No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003. The commenters state that those sheets are the specific inspection requirements for cracking in the outer fillet. We agree. We added ''Sheets 1 and 2'' to paragraph (g) of the final rule.

Requests To Change the Reinspection intervals

Several commenters ask us to change the reinspection intervals that are incorporated by reference in paragraph (g). The commenters feel that the requirement to ''reinspect at the next regular S2 Blade Inspection'' as stated in Figure 5 of GE SB No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003, might be misleading. Although the next regular S2 Blade Inspection should coincide with 250 cycles-since-last-inspection (CSLI) for CF6–80C2D1F engines with 5.0 or more cycles per flight leg and 400 CSLI for all other engines, the lack of specific cyclic limits might cause confusion. We agree. We added new paragraphs (h), (h)(1), and (h)(2) to the final rule to define the next regular S2 Blade Inspection as cyclic limits of 250 and 400 CSLI respectively.

Request To Delete or Change the Paragraph Relating To Operation as More Than One Engine Configuration

Two commenters ask us to delete or change paragraph (h) of this AD, ''Engines Operated as More than One Engine Model Configuration (Thrust Level).'' Both commenters feel that we should delete paragraph (h) because the inspections are limited to repaired nozzles. One commenter also feels that we need a provision for engines that have operated at different thrust levels (*i.e.,* reconfigured from one model to another model) before the initial inspection. We agree. We changed paragraph (i) of the final rule to require performing the initial inspection at the lowest applicable inspection threshold, and reinspection intervals associated with the current engine model configuration.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 1,100 GE CF6–80C2 turbofan engines of the affected design in the worldwide fleet. We estimate that this AD will affect 300 of these engines installed on airplanes of U.S. registry. We also estimate that it will take about 2 work hours per engine to perform the inspections on engines that exhibit no damage, and therefore require no mapping of damage, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $39,000.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–43–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2004–22–07 General Electric Company: Amendment 39–13835. Docket No. 2003–NE–43–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 1, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80C2A1, –80C2A2, –80C2A3, –80C2A5, –80C2A5F, –80C2A8, –80C2B1, –80C2B1F, –80C2B2, –80C2B2F, –80C2B4, –80C2B4F, –80C2B5F, –80C2B6, –80C2B6F, –80C2B6FA, –80C2B7F, –80C2B8F, and –80C2D1F turbofan engines, with the part numbers (P/Ns) of high pressure turbine (HPT) stage 2 nozzle guide vanes (HPT S2 NGVs) listed in the following Table 1, installed:

TABLE 1.—AFFECTED HPT S2 NGVS

HPT S2 NGV:	Provided that:
P/N 1347M66G03, P/N 1347M66G04, and P/Ns 1815M81G01 through 1815M81G07.	Insert, P/N 1957M40G01 or P/N 1957M40G02, was installed during repair.
P/Ns 9373M80G07 through 9373M80G22, and P/Ns 9373M80G25 through 9373M80G32.	Insert, P/N 1957M40G01 or P/N 1957M40G02, was installed during repair, or NGV was repaired by GE between April 1, 1998 through September 30, 1999.
P/Ns 9373M80G33 through 9373M80G36	Part was repaired.
P/Ns 2080M38G01 through 2080M38G16, and P/Ns 2080M38G19 through 2080M38G24.	Insert, P/N 1957M40G01 or P/N 1957M40G02, was installed during modification or repair.
P/Ns 2080M19G01 through 2080M19G04, P/Ns 2080M19G07 through 2080M19G16, P/Ns 2080M19G19 through 2080M19G46, P/Ns 2080M19G49 through 2080M19G70, and P/Ns 2080M19G73 through 2080M19G80.	Insert, P/N 1957M40G01 or P/N 1957M40G02, was installed during modification or repair.

These engines are installed on, but not limited to, Airbus A300, Airbus A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 airplanes.

Unsafe Condition

(d) This AD results from an uncontained engine failure due to HPT S2 NGV distress. We are issuing this AD to prevent blade separation from HPT S2 NGV distress, which could result in an uncontained engine failure.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Initial Flex Borescope Inspection of NGVs

(f) Flex-borescope inspect the NGVs following paragraph 3.B.(3) through 3.B.(5) of Accomplishment Instructions of GE Service Bulletin (SB) No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003, as follows:

Initial Inspection Thresholds

(1) For all P/N NGVs, initial-inspect after the effective date of this AD at the following applicable initial inspection thresholds:

(i) For CF6–80C2A2, –80C2B2, and –80C2B2F engines, inspect at or before accumulating 1,600 HPT cycles-since-overhaul (CSO).

(ii) For CF6–80C2A1, –80C2A3, –80C2A5, –80C2A5F, –80C2A8, –80C2B1, –80C2B1F, –80C2B4, –80C2B4F, –80C2B5F, –80C2B6, –80C2B6F, –80C2B6FA, –80C2B7F, –80C2B8F, and –80C2D1F engines, inspect at or before accumulating 800 CSO.

(2) For engines listed in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD that are already beyond the initial inspection thresholds, inspect at or before accumulating an additional 200 CSO after the effective date of this AD.

Reinspection

(g) Reinspect or remove from service NGVs following the Conditions and Reinspection intervals listed in the ''Inspection Table for Cracking in the Airfoil Outer Fillet'', Figure 5, Sheets 1 and 2, of GE SB No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003.

(h) If the recommendation contained in Figure 5, Sheets 1 and 2, of GE SB No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003, states ''reinspect at next regular S2 Blade inspection,'' then for the purposes of this AD, the next regular S2 Blade Inspection must be within the following intervals:

(1) For CF6–80C2D1F engines with 5.0 or more cycles per flight leg, the next regular S2 Blade inspection means within 250 cycles-since-last-inspection (CSLI).

(2) For all other engines listed in paragraph (c) of this AD, the next regular S2 Blade inspection means within 400 CSLI.

Engines Operated as More Than One Engine Model Configuration (Thrust Level)

(i) For NGVs installed in engines operated as more than one engine model configuration (thrust level), use the lowest applicable initial inspection threshold, and use the reinspection intervals associated with the current engine model.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(k) You must use GE Service Bulletin No. CF6–80C2 S/B 72–0952, Revision 6, dated May 5, 2003, to perform the inspections and removals required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400; fax (513) 672–8422. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Related Information

(l) None.

Issued in Burlington, Massachusetts, on October 20, 2004.

Francis A. Favara,

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

[FR Doc. 04–23929 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[USCG–2004–19416]

Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations and Regulated Navigation Areas

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between July 1, 2004, and September 30, 2004, that were not published in the **Federal Register**. This quarterly notice lists temporary special local regulations, security zones, safety zones, and regulated navigation areas, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules that became effective and were terminated between July 1, 2004, and September 30, 2004.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact LT Jeff Bray, Office of Regulations and Administrative Law, telephone (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Regulated navigation areas establish regulations for vessels navigating within the area. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, security zones, safety zones or regulated navigation areas by Coast Guard officials; on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, safety zones and regulated navigation areas. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations, security zones and regulated navigation areas listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or

limited scope and temporary effectiveness.

The following rules were placed in effect temporarily during the period from July 1, 2004, through September 30, 2004, unless otherwise indicated.

Dated: October 19, 2004.

D.L. Nichols,

Acting Chief, Office of Regulations and Administrative Law.

DISTRICT QUARTERLY REPORT—3RD QUARTER 2004

District docket	Location	Type	Effective date
01–04–006	Tall Ships Environmental Festival, New London	Safety/Security Zone	7/21/2004
01–04–038	UBS Trophy America's Cup Class Regatta, Rhode.	Safety Zone	7/19/2004
01–04–044	Beverly Homecoming Fireworks—Beverly, Massac.	Safety Zone	8/8/2004
01–04–045	Lynn, MA	Safety Zone	7/3/2004
01–04–056	Quonset Point, RI	Safety Zone	7/18/2004
01–04–061	Beverly, MA	Safety Zone	7/4/2004
01–04–062	Salem Harbor, Salem, MA	Safety Zone	7/4/2004
01–04–085	Charles River, MA	Safety Zone	7/4/2004
01–04–086	4th of July Parade, Manchester, MA	Safety Zone	7/3/2004
01–04–094	Boston, MA	Security Zone	7/14/2004
01–04–097	Boston, Massachusetts	Safety Zone	7/29/2004
01–04–101	Democratic National Convention Events	Security Zone	7/28/2004
01–04–110	Kennebunkport, ME	Security Zone	8/6/2004
01–04–112	Marine Safety Office Boston Change of Command	Security Zone	8/12/2004
01–04–120	Portland, ME	Security Zone	9/17/2004
05–04–108	Washington, D.C. and Arlington and Fairfax	Security Zone	7/9/2004
05–04–124	Chickahominy River, Williamsburg, VA	Safety Zone	7/4/2004
05–04–125	Linkhorn Bay, Virginia Beach, VA	Safety Zone	7/4/2004
05–04–126	Atlantic Ocean, Ocean City, MD	Safety Zone	7/4/2004
05–04–127	Newport News, VA	Safety Zone	7/4/2004
05–04–128	Atlantic Ocean, Virginia Beach, VA	Safety Zone	7/4/2004
05–04–130	Potomac River, VA	Safety Zone	7/11/2004
05–04–132	York River, Yorktown, VA	Safety Zone	7/4/2004
05–04–140	Delaware Bay	Security Zone	7/22/2004
05–04–141	Atlantic Ocean, Atlantic City, NJ	Special Local Reg	8/18/2004
05–04–147	Choptank River, MD	Special Local Reg	9/26/2004
05–04–151	Wilmington, NC	Safety Zone	8/14/2004
05–04–154	Tullytown, PA	Special Local Regs	9/11/2004
05–04–159	Delaware River	Security Zone	8/17/2004
05–04–185	Atlantic Ocean, VA	Safety Zone	9/25/2004
05–04–186	Chesapeake Bay, VA	Safety Zone	9/20/2004
05–04–188	Delaware River, PA	Safety Zone	9/24/2004
07–04–043	Dania Beach/Hollywood Super Boat Race, Dania	Special Local Regs	7/18/2004
08–04–029	Ohio River, KY	RNA	8/8/2004
09–04–014	Lake Michigan, IN	Safety Zone	7/16/2004
09–04–049	Mona Lake, MI	Safety Zone	7/2/2004
09–04–050	Lake Erie, MI	Safety Zone	7/2/2004
09–04–051	Lake Ontario, Olcott, NY	Safety Zone	7/3/2004
09–04–052	Poet Bay, Lake Ontario, Wolcott, NY	Safety Zone	7/3/2004
09–04–053	Sodus Bay, NY	Safety Zone	7/3/2004
09–04–054	Lake Huron, MI	Safety Zone	7/3/2004
09–04–055	Tonawanda, NY	Safety Zone	7/4/2004
09–04–056	Lake Ontario, NY	Safety Zone	7/4/2004
09–04–057	Maumee River, OH	Safety Zone	7/3/2004
09–04–058	Lake Erie	Safety Zone	7/3/2004
09–04–059	Detroit River, MI	Safety Zone	7/2/2004
09–04–060	Saginaw River	Safety Zone	7/5/2004
09–04–061	Trenton Channel	Safety Zone	7/4/2004
09–04–062	Lake Huron, MI	Safety Zone	7/4/2004
09–04–065	Lake Huron, MI	Safety Zone	7/4/2004
09–04–066	Lake Huron, MI	Safety Zone	7/4/2004
09–04–067	Lake Michigan, IL	Safety Zone	7/3/2004
09–04–068	Maumee River, OH	Safety Zone	7/4/2004
09–04–069	St. Clair River, MI	Safety Zone	7/3/2004
09–04–070	Lake St. Clair, MI	Safety Zone	7/4/2004
09–04–071	Detroit River, MI	Safety Zone	7/4/2004
09–04–072	Lake St. Clair, MI	Safety Zone	7/4/2004
09–04–073	St. Clair River, MI	Safety Zone	7/4/2004
09–04–074	Lake Huron, MI	Safety Zone	7/4/2004
09–04–075	Lake St. Clair, MI	Safety Zone	7/3/2004
09–04–076	Ecorse Channel, MI	Safety Zone	7/4/2004
09–04–077	Lake Michigan, WI	Safety Zone	7/4/2004
09–04–078	Lake Huron, MI	Safety Zone	7/4/2004
09–04–080	Lake Erie, OH	Safety Zone	7/5/2004

DISTRICT QUARTERLY REPORT—3RD QUARTER 2004—Continued

District docket	Location	Type	Effective date
09–04–081	Lake Michigan, WI	Safety Zone	7/3/2004
09–04–082	Manitowac River, MI	Safety Zone	7/4/2004
09–04–083	Seneca River, MI	Safety Zone	7/16/2004
09–04–084	Buffalo Harbor, NY	Safety Zone	7/9/2004
09–04–085	Huron Harbor, OH	Safety Zone	7/9/2004
09–04–086	Fireworks Display, Kewaunee Harbor, Lake Mic	Safety Zone	7/16/2004
09–04–087	Duluth Harbor	Security Zone	7/13/2004
09–04–088	St. Lawrence River, NY	Safety Zone	7/11/2004
09–04–089	Lake Huron, MI	Safety Zone	7/18/2004
09–04–090	Detroit River	Safety Zone	7/15/2004
09–04–091	Lake Huron, MI	Safety Zone	7/17/2004
09–04–092	Port Washington Fish Day Fireworks, Port Wash	Safety Zone	7/17/2004
09–04–093	Presque Isle Harbor, Lake Superior Marquette,	Security Zone	7/13/2004
09–04–094	Harbor Beach Fireworks, Lake Huron, MI	Safety Zone	7/17/2004
09–04–098	Renaissance Center, Cobo Hall, Detroit River, MI	Security Zone	7/22/2004
09–04–099	Oswego Harbor Fest Air Show, Oswego, NY	Safety Zone	7/24/2004
09–04–100	Renaissance Center, Cobo Hall, Detroit River, MI	Security Zone	7/23/2004
09–04–101	Regatta Trenton Race, Detroit River, Trenton, MI	Safety Zone	7/24/2004
09–04–102	Tug salvor and barge KT C115 marine casualty	Safety Zone	7/27/2004
09–04–103	St. Clair River, St. Clair, MI	Safety Zone	7/31/2004
09–04–106	Cleveland Harbor, Cleveland, Ohio	Security Zone	7/30/2004
09–04–110	Milwaukee Harbor, Milwaukee, Wisconsin	Safety Zone	7/30/2004
09–04–111	Port Washington, WI	Safety Zone	7/17/2004
09–04–112	Muskegon, Michigan to Milwaukee, Wisconsin	Security Zone	8/2/2004
09–04–113	Kenosha, Wisconsin	Safety Zone	8/4/2004
09–04–114	Milwaukee River, Milwaukee, Wisconsin	Security Zone	8/2/2004
09–04–115	Milwaukee, Wisconsin	Safety Zone	8/6/2004
09–04–116	Milwaukee, Wisconsin	Safety Zone	8/7/2004
09–04–117	Saginaw River, Saginaw, MI	Security Zone	8/5/2004
09–04–118	Lake Michigan, Muskegon, MI	Safety Zone	8/6/2004
09–04–119	Lake Erie, Bay Village, Ohio	Safety Zone	8/8/2004
09–04–120	Seneca River, Baldwinsville, NY	Safety Zone	8/7/2004
09–04–121	Grand Haven, MI	Safety Zone	8/13/2004
09–04–122	Fairport Harbor, Grand River, Ohio	Safety Zone	8/14/2004
09–04–124	Cleveland Harbor, Cleveland, Ohio	Safety Zone	8/14/2004
09–04–126	St. Clair, MI	Safety Zone	8/20/2004
09–04–128	Lakeview Park, Lorain, Ohio	Safety Zone	8/29/2004
09–04–132	Duluth, MN	Security Zone	9/9/2004
09–04–133	Lake Michigan, IL	Safety Zone	9/17/2004
09–04–134	Antique Boat Show, Buffalo, NY	Safety Zone	9/11/2004
09–04–135	Chicago River, IL	Safety Zone	9/23/2004
09–04–136	Cleveland Harbor, OH	Security Zone	9/15/2004
09–04–137	Milwaukee River, WI	Safety Zone	9/18/2004
09–04–139	Baldwinsville, NY	Safety Zone	9/18/2004
09–04–141	President Bush, Racine WI Rally	Security Zone	9/24/2004
09–04–377	Lake Erie, MI	Safety Zone	7/3/2004
13–04–030	Coos Bay, OR	Safety Zone	7/4/2004
13–04–032	Fireworks Display in the COTP Zone	Safety Zone	7/4/2004
13–04–035	Budd Inlet, West Bay, Olympia, Washington and	Security Zone	8/17/2004
13–04–036	Medina, Lake Washington, WA	Security Zone	8/13/2004
13–04–037	Columbia and Willamette Rivers, Portland, OR	Security Zone	8/13/2004
13–04–038	Columbia River, OR, in the vicinity of Hood R	Security Zone	8/14/2004
Charleston 04–111	Vessels Carrying U.S. Department of Energy Ca	Security Zone	9/17/2004
Guam 04–006	U.S. Navy Underwater Detonation Operations Out	Safety Zone	7/1/2004
Guam 04–007	U.S. Navy Underwater Detonation Operation Nor	Safety Zone	7/1/2004
Guam 04–008	Unexploded ordnance, South of Orote Peninsula	Safety Zone	7/4/2004
Jacksonville 04–051	Banana River, FL	Safety Zone	7/4/2004
Jacksonville 04–052	Lake Eustis, Eustis, FL	Safety Zone	7/2/2004
Jacksonville 04–053	St. John's River, FL	Safety Zone	7/4/2004
Jacksonville 04–054	Daytona Beach, FL	Safety Zone	7/4/2004
Jacksonville 04–055	Indian River	Safety Zone	7/4/2004
Jacksonville 04–056	Atlantic Ocean	Safety Zone	7/4/2004
Jacksonville 04–057	Lake Monroe Harbor, FL	Safety Zone	7/4/2004
Jacksonville 04–058	Indian River, FL	Safety Zone	7/4/2004
Jacksonville 04–062	Melbourne, FL	Safety Zone	7/4/2004
Jacksonville 04–064	Amelia River, FL	Safety Zone	7/4/2004
Jacksonville 04–067	St. John's River, FL	Safety Zone	7/4/2004
Jacksonville 04–068	Halifax River, FL	Safety Zone	7/4/2004
Jacksonville 04–069	Lake Dora, FL	Safety Zone	7/4/2004
Jacksonville 04–070	West Lake Tohopekaliga, FL	Safety Zone	7/4/2004
Jacksonville 04–078	St. John's River	Safety Zone	7/4/2004

DISTRICT QUARTERLY REPORT—3RD QUARTER 2004—Continued

District docket	Location	Type	Effective date
Jacksonville 04–079	Atlantic Ocean	Safety Zone	7/4/2004
Jacksonville 04–086	Matanzas River, FL	Safety Zone	7/4/2004
Jacksonville 04–088	St. Marys River	Safety Zone	7/3/2004
Jacksonville 04–102	Port Canaveral, FL	Safety Zone	8/2/2004
Jacksonville 04–122	Port Canaveral, FL	Safety Zone	9/25/2004
Jacksonville 04–123	Ports of Jacksonville and Fernandina, FL	Safety Zone	9/25/2004
Louisville 04–006	Ohio River, KY	Safety Zone	7/22/2004
Miami 04–071	West Palm Beach, FL	Safety Zone	7/4/2004
Miami 04–072	Lantana, FL	Safety Zone	7/4/2004
Miami 04–073	Boynton Beach, FL	Safety Zone	7/4/2004
Miami 04–074	Ft. Lauderdale, FL	Safety Zone	7/4/2004
Miami 04–075	Stuart, FL	Safety Zone	7/4/2004
Miami 04–076	Bayside Park, Miami, FL	Safety Zone	7/4/2004
Miami 04–077	Rivera Beach, FL	Safety Zone	7/4/2004
Miami 04–081	Biscayne Bay, FL	Safety Zone	7/10/2004
Miami 04–085	Bay Front Park, FL	Security Zone	7/10/2004
Miami 04–098	Miami, FL	Safety Zone	7/21/2004
Mobile 04–021	Pensacola, FL	Security Zone	8/10/2004
Mobile 04–022	Pensacola, FL	Security Zone	8/10/2004
Mobile 04–028	Panama City, FL	Security Zone	8/10/2004
Mobile 04–029	Powell Lake, FL	Security Zone	8/10/2004
Mobile 04–030	St. Andrews Bay, FL	Security Zone	8/10/2004
Mobile 04–031	Panama City, FL	Security Zone	8/10/2004
Mobile 04–032	Panama City, FL	Security Zone	8/10/2004
New Orleans 04–008	St. Louis Bay, MS	Safety Zone	7/12/2004
New Orleans 04–009	Lower Mississippi River	Safety Zone	7/21/2004
New Orleans 04–010	Inner Harbor, New Orleans, LA	Safety Zone	7/2/2004
New Orleans 04–011	Inner Harbor, New Orleans, LA	Safety Zone	7/2/2004
New Orleans 04–012	South West Pass, LA	Safety Zone	7/12/2004
New Orleans 04–013	Lower Mississippi River, LA	Safety Zone	7/12/2004
New Orleans 04–014	Mississippi River, LA	Safety Zone	7/11/2004
New Orleans 04–016	Port Sulphur, LA	Safety Zone	7/2/2004
New Orleans 04–017	Bayou Sorrel, LA	Safety Zone	7/10/2004
New Orleans 04–018	Vicksburg, MS	Safety Zone	7/1/2004
New Orleans 04–019	Mississippi River, LA	Safety Zone	7/3/2004
New Orleans 04–020	Lake Pontchartrain	Safety Zone	7/4/2004
New Orleans 04–021	Lake Pontchartrain, LA	Safety Zone	7/4/2004
New Orleans 04–022	Southwest Passage, LA	Safety Zone	7/2/2004
New Orleans 04–023	Lower Mississippi River, LA	Safety Zone	7/29/2004
New Orleans 04–024	Lower Mississippi River, LA	Safety Zone	8/26/2004
New Orleans 04–025	Lower Mississippi River, LA	Safety Zone	8/28/2004
New Orleans 04–026	Lower Mississippi River, LA	Safety Zone	8/29/2004
New Orleans 04–031	Mississippi River, LA	Safety Zone	9/22/2004
Pittsburgh 04–015	Allegheny River, PA	Safety Zone	7/24/2004
Pittsburgh 04–020	Allegheny River, PA	Safety Zone	7/29/2004
Pittsburgh 04–021	Monogahela River, PA	Safety Zone	7/31/2004
Pittsburgh 04–022	Monogahela River, PA	Security Zone	7/31/2004
Pittsburgh 04–023	Allegheny River, PA	Safety Zone	9/8/2004
Port Arthur 04–006	Hackberry, LA	Safety Zone	7/22/2004
Port Arthur 04–007	Neches River, TX	Safety Zone	7/9/2004
Port Arthur 04–010	Neches River, TX	Safety Zone	7/4/2004
Port Arthur 04–012	Sabine-Neches Canal, TX	Safety Zone	7/4/2004
Port Arthur 04–013	Sabine River, TX	Safety Zone	7/4/2004
San Diego 04–016	Colorado River, Laughlin, NV	Safety Zone	7/1/2004
San Diego 04–017	Laughlin, NV	Safety Zone	7/3/2004
San Diego 04–018	North San Diego Bay, CA	Safety Zone	7/2/2004
San Diego 04–020	San Diego Bay	Security Zone	7/23/2004
San Diego 04–022	Lake Havasu, AR	Safety Zone	7/18/2004
San Diego 04–023	San Diego Bay, CA	Safety Zone	9/9/2004
San Diego 04–024	Laughlin, NV	Safety Zone	9/5/2004
San Francisco Bay 04–014	San Francisco Bay, CA	Safety Zone	7/4/2004
San Francisco Bay 04–019	Sacramento River	Safety Zone	7/23/2004
San Francisco Bay 04–021	San Francisco Bay, CA	Safety Zone	9/10/2004
San Juan 04–081	Swimming Across San Juan Harbor, San Juan, PR.	Safety Zone	7/18/2004
Savannah 04–089	Savannah River, Savannah River, GA	Safety Zone	7/4/2004
Southeast Alaska 04–001	Peril Strait, Cozian Reef, Motor vessel LeCont	Safety Zone	7/2/2004
Southeast Alaska 04–002	Tugboat Chuhunta and Motor vessel LeConte, So	Safety Zone	7/4/2004
St. Louis 04–001	Burlington, IA	Safety Zone	7/20/2004
St. Louis 04–002	Dubuque, LA	Security Zone	7/7/2004
St. Louis 04–003	Lake of the Ozarks, MO	Safety Zone	7/5/2004

DISTRICT QUARTERLY REPORT—3RD QUARTER 2004—Continued

District docket	Location	Type	Effective date
St. Louis 04–004	St. Louis, MO	Security Zone	7/2/2004
St. Louis 04–005	Davenport, IA	Safety Zone	7/3/2004
St. Louis 04–006	Moline, IL	Safety Zone	7/25/2004
St. Louis 04–007	Davenport, IA	Safety Zone	7/25/2004
St. Louis 04–008	Davenport, IA	Safety Zone	7/26/2004
St. Louis 04–009	Kansas City, MO	Safety Zone	7/1/2004
St. Louis 04–010	LaGrange, MO	Safety Zone	7/31/2004
St. Louis 04–011	Hannibal, MO	Safety Zone	7/1/2004
St. Louis 04–012	Kansas City, MO	Safety Zone	7/4/2004
St. Louis 04–013	Missouri River, KS	Safety Zone	7/4/2004
St. Louis 04–014	Missouri River, KS	Safety Zone	7/2/2004
St. Louis 04–015	Upper Mississippi River, MO	Safety Zone	7/15/2004
St. Louis 04–016	St. Paul, MN	Safety Zone	7/3/2004
St. Louis 04–017	Bellevue, IA	Safety Zone	7/4/2004
St. Louis 04–018	Clinton, IA	Safety Zone	7/4/2004
St. Louis 04–019	Upper Mississippi River, IA	Safety Zone	7/3/2004
St. Louis 04–020	East Moline, IL	Safety Zone	7/4/2004
St. Louis 04–021	Ft. Madison, IA	Safety Zone	7/4/2004
St. Louis 04–022	Illinois River, IL	Safety Zone	7/4/2004
St. Louis 04–023	Illinois River, IL	Safety Zone	7/4/2004
St. Louis 04–025	Missouri River, NE	Safety Zone	7/17/2004
St. Louis 04–026	Missouri River, KS	Safety Zone	7/24/2004
St. Louis 04–027	Leclaire, IA	Safety Zone	8/14/2004
St. Louis 04–028	Kaskaskia River, IL	Safety Zone	8/15/2004
St. Louis 04–029	Upper Mississippi River, IL	Safety Zone	8/14/2004
St. Louis 04–030	Davenport, IA	Security Zone	8/4/2004
St. Louis 04–034	Lake of the Ozarks, MO	Safety Zone	8/29/2004
St. Louis 04–037	Missouri River, MO	Safety Zone	9/18/2004
St. Louis 04–038	Missouri River, ,MO	Safety Zone	9/24/2004
St. Louis 04–039	Upper Mississippi River, IA	Safety Zone	9/18/2004
St. Louis 04–040	Upper Mississippi River, MN	Security Zone	9/16/2004
Tampa 04–110	Tampa Bay, FL	Safety Zone	9/10/2004

[FR Doc. 04–23965 Filed 10–26–04; 8:45 am]
BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Standard Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In this final rule the Postal Service adopts an amendment to Domestic Mail Manual (DMM) standards concerning material eligible for mailing at Standard Mail postage rates. The revised standards clarify the circumstances in which mail containing ''personal'' information may be eligible for Standard Mail, rather than First-Class Mail, rates. The amendment also reorganizes and renumbers other standards for First-Class Mail and Standard Mail to better describe the service provided under each class.

EFFECTIVE DATE: June 1, 2005.

FOR FURTHER INFORMATION CONTACT: Sherry Freda, Manager, Mailing Standards, United States Postal Service, 202–268–7261.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on April 19, 2004 (69 FR 20841), the Postal Service proposed an amendment to Domestic Mail Manual (DMM) standards governing material eligible for mailing at Standard Mail postage rates. The Postal Service adopts the proposal, with modifications, for the reasons explained below.

Background and Summary

As discussed in the proposal, Postal Service standards for First-Class Mail and Standard Mail are based, in part, on laws enacted by Congress and the specifications in the Domestic Mail Classification Schedule (DMCS). These DMCS standards specify that printed material weighing less than 16 ounces may be sent as Standard Mail if it is not required to be entered as First-Class Mail. Generally, mail wholly or partially in handwriting or typewriting, mail sealed against postal inspection, material having the character of actual and personal correspondence, and bills and statements of account must be mailed as First-Class Mail or Express Mail.

Printed material, much of which is prepared by computer, often qualifies at Standard Mail rates, but not always. If it includes personal information, printed material may have the character of actual and personal correspondence and be subject to First-Class Mail rates. However, under certain limited conditions, printed material containing personal information may be eligible for Standard Mail rates.

Over the last several years this provision has become more significant as advances in technology enabled mailers to increase the amount of ''personal information'' in computer-generated mailings, including advertising material typically entered as Standard Mail. In turn, this change has led to questions whether these mailings, including tax mailings, warranty information, proxy materials, financial services mailings such as credit card and equity loan advertisements, and others, would qualify as Standard Mail. As a result, in response to requests from postal customers for greater clarity on Standard Mail eligibility, the Postal Service determined to undertake this rulemaking.

The main focus of the proposal was the adoption of more explicit guidance—a ''bright line''—concerning the inclusion of personal information in Standard Mail. Other eligibility

standards are left substantively unchanged, although they were reorganized for clarity and to better describe postal services.

Clarifying the circumstances in which personal information may be included in Standard Mail is important for both the Postal Service and its customers. All parties—the Postal Service, mailers, and mail recipients—benefit from the provision of services that are fairly priced and secure. Customers need certainty in the prices they will pay for their mail, for budgeting and planning. Customers also need assurance that they are charged the same prices as other customers are charged for similar mail. From a postal perspective, consistent administration of mail acceptance and classification is a vital concern, and it is critical that all customers pay the proper rate of postage on their mail.

Nevertheless, the Postal Service recognizes that it does not have unlimited rulemaking discretion in this area. The Domestic Mail Manual standards must be consistent with the provisions in the DMCS. Those provisions are established under procedures set forth in the Postal Reorganization Act and require a recommendation from the independent Postal Rate Commission (PRC) following a Postal Service request to effect changes. Therefore, while some commenters suggested radical revisions to the standards in this area, these revisions in many cases would require DMCS changes not contemplated in this rulemaking. Other commenters raised issues that are beyond the scope of this rulemaking and are not addressed here, such as comments concerning the procedures for issuing administrative decisions or disclaimers regarding solicitations in the guise of bills, invoices, or statements of account required by 39 U.S.C. 3001(d)(2)(A).

This rulemaking is the first on this subject since the Postal Service created standards in the early 1980s recognizing technological advancements that permitted the inclusion of personal information in advertising material historically sent as Standard Mail. Before that rulemaking, the inclusion of any personal information in a mailpiece caused its classification as First-Class Mail. The examples that motivated that rulemaking involved instances where the only reason for inclusion of the personal information in the mailpiece was to support advertising or a solicitation for funds to a charitable organization. As explained in the proposal, the Postal Service continues to stand by the principles underlying that rulemaking and the policy that these advertising or solicitation mailings should be entitled to entry at Standard Mail rates.

The mailpieces that have prompted concerns among mailers and the Postal Service are those that contain personal information that is included for a reason other than the support of advertising or a charitable solicitation. In some cases, the personal information supports an advertisement or solicitation but is also included for other reasons. And, in other cases, the personal information is not included to support an advertisement or solicitation, but is included only for other purposes. As an example, a mailpiece might convey to an addressee the specific terms of an insurance policy to which the addressee recently subscribed, such as the premiums, coverage, and policy conditions. This is personal information and is conveyed to the addressee to confirm the coverage he or she purchased. Similar mailpieces also might include a request that the addressee consider purchasing additional coverage.

Another example might involve a firm that sells radios, computers, and clocks. The firm mails a warranty to customers who purchased computers. The mailing includes personal information that specifies the computer by model number, serial number, price, manufacturer, and date of purchase, and also features specific warranty provisions applicable to the product. The mailpiece advises the addressee/purchaser to retain the correspondence for his or her records. The specific information in the mailpiece associating the addressee to his or her computer purchase is considered personal information. Some of the firm's mailings also include advertising for radios, clocks, and other products sold by the firm.

Consistent with the principles underlying the rulemaking in the 1980s, the Postal Service believes it vital to consider the purposes for which personal information is included in a mailpiece. Where the personal information is included solely to support an advertisement or charitable solicitation, the mail will not be considered to have the character of actual and personal correspondence and may be eligible for Standard Mail rates (assuming it meets other applicable standards). In contrast, where the personal information is included for other purposes—rather than only to support a related advertisement or solicitation—the mailpiece will be considered to have the character of actual and personal correspondence and will not be eligible for Standard Mail rates. Accordingly, in the examples discussed above, the personal information is included to support purposes other than advertising, either in whole or in part, and the mailpieces are properly classified as First-Class Mail.

Summary of Comments

The Postal Service received 402 written comments in response to its proposal, including several that were received late but were considered. The commenters were diverse, including approximately 350 nonprofit organizations and organizations representing such organizations; Congressional representatives; private individuals; advocacy and political campaign constituencies; financial industry representatives; Periodicals industry representatives; and commenters concerned about privacy issues.

Nearly all comments agreed with the Postal Service's goal to provide clearer guidance when mail containing personal information may be entered as Standard Mail. There were a variety of views on the effectiveness of the proposed changes, and many commenters suggested improvements. A small number suggested that the proposal be withdrawn and a new proposal considered, possibly following discussions with mailer groups. The Postal Service has carefully considered these comments and, in some respects, has modified the proposed rule. In other areas of concern, we are providing a more thorough explanation in this final rule or in other publicly available rulings, such as Customer Support Rulings (CSRs) on Postal Explorer *(http://pe.usps.gov).* Since we believe that these actions satisfy the concerns expressed by commenters, we find that it is not necessary to withdraw the proposal and initiate a further rulemaking process.

Comments Analysis

Many commenters expressed concern that application of the proposed ''exclusive purpose'' test could cause mailings to be classified as First-Class Mail because of the inclusion of nonpersonal information in the mailpiece. This concern was most often expressed by nonprofit organizations and their representatives, who explained that many nonprofit mailings contain educational or other purely informational material in addition to solicitations for donations. These comments are well taken. Upon reviewing the proposal, the Postal Service agrees that a literal application of the proposed standard might result in

unintended consequences and has determined to revise the language.

For example, assume a mailpiece entered by an authorized nonprofit organization included a cover letter seeking donations from members. The letter lists the member's donation from the previous year, which is considered personal information, and urges the member to double the amount this year. The only purpose for the personal information (the amount of the previous donation) is to support the solicitation for donations. However, also included in the mailpiece is a preprinted flyer outlining the extent of famine conditions internationally and explaining the organization's recent efforts concerning disaster relief. The purpose of this flyer is, at least in part, educational.

The Postal Service believes this mailpiece, as described, should be eligible for Standard Mail rates, since the inclusion of purely nonpersonal, informational printed material should not disqualify it from the use of Standard Mail rates. However, that conclusion would be open to question under a literal application of the proposed rule, particularly proposed E610.3.1c, which considers whether the exclusive purpose of the ''mailpiece'' is advertising or a solicitation of donations.

Although the Postal Service agrees that the concerns raised by nonprofits have merit, it has determined to adopt a different remedy than suggested. The remedy proposed by these commenters would apply only to nonprofit organizations. The Postal Service believes that excluding other mailers is inappropriate, since the inclusion of purely nonpersonal, informational material should not disqualify other mailers from using Standard Mail rates.

Additionally, some commenters suggest a test where advertising or solicitation must be the primary (rather than the exclusive) purpose of the mailing. We believe that this test would be difficult to administer. In the example of the nonprofit mailing above, how would we determine the primary purpose of the mailpiece? Additionally, we find that a primary purpose test is unnecessary, if not inappropriate, in this context, because the amount of purely nonpersonal, printed informational material should not disqualify a mailpiece from the use of Standard Mail rates. In short, we do not believe the classification of a mailpiece should hinge on whether the solicitation or provision of nonpersonal information is the primary purpose of the mailpiece, as long as all personal information is included only to support the advertising or solicitation content.

This approach is consistent with the principle underlying the early 1980s rulemaking. Thus, in the nonprofit example described above, if the only purpose for including the personal information is to support a solicitation for donations, the inclusion of the personal information should not cause the piece to be classified as First-Class Mail. Further, the inclusion of purely nonpersonal educational or other informational content in the mailpiece should not disqualify the mailpiece from entry at Standard Mail rates, regardless of the amount of such information or its ratio to the amount of advertising content, subject to applicable weight limits for Standard Mail. Accordingly, we are deleting proposed E610.3.1c and substituting the following: ''The exclusive reason for inclusion of all of the personal information is to support the advertising or solicitation in the mailpiece.''

Many of the remaining comments on the proposed rule center on two themes: a concern that the proposed rule will be difficult to administer or result in inconsistent decisions, and proposals for ''safe harbors'' for the mail of specific industries. The financial industry, represented by seven commenters, requested a safe harbor for certain types of financial services mail, such as offers with terms or pricing that include pre-approved offers for credit and insurance. Another financial industry commenter requested a safe harbor for mailings required by regulations of other federal agencies. ''[C]hanges to the Title 12—Banks and Banking regulations that have resulted in written notification to customers. * * *'' is cited as the example. Representatives of authorized Nonprofit Standard Mail mailers offered a similar suggestion, proposing to permit the inclusion of personal information in nonprofit mail if it ''advances one or more qualifying purposes of the organization.''

A small number of commenters representing an election campaign constituency claim that they are the subject of discrimination, on the basis that commercial mailings may be eligible for Standard Mail rates while sample ballots and other political campaign mail containing personal information is not. They support the intent of the proposed revisions as they affect commercial mailings but express the opinion that election campaign mail does not fit into the same category and any revisions ''should specifically exempt political mail.''

The Postal Service does not believe it proper, nor believe itself authorized, to create ''safe harbors'' for the mail of particular mailers, particular industries, or types of customers. The standards in the Domestic Mail Manual must be consistent with the DMCS and applicable statutes. The DMCS creates general standards and does not suggest that certain types of mail or mailers be excepted from standards. This principle also is consistent with the Postal Reorganization Act, which prohibits the Postal Service (except where statutorily authorized) from undue or unreasonable discrimination among mailers in the provision of services (*see* 39 U.S.C. 403(c)).

Moreover, even if the Postal Service had the authority to create ''safe harbors,'' their adoption could create the type of administrative concerns that motivated this rulemaking. We would need to define the safe harbors and then apply the standards to determine whether a mailing meets that category. For example, if we adopted a safe harbor for financial services mailings containing personal information, we must define ''financial services'' mail, and then determine whether specific mailings fell within that definition. We believe that this determination would cause significant administrative problems.

For similar reasons, permitting personal information that supports the mission of a nonprofit mailer would be difficult to administer. Acceptance decisions as to the nature of the mission of a nonprofit organization and whether the use of personal information ''supports'' that mission could become highly subjective and lead to inconsistencies and contested eligibility for nonprofit rates. We have also decided not to adopt the suggestion of mailers who, concerned with consistent application of the proposed standard, propose a definitive list of specific types of information or mailings required to be sent as First-Class Mail. We believe that such a list would decrease the amount of mail eligible for Standard Mail rates. Moreover, we believe that it would create, and not ease, administrative concerns. First, since the business of our customers continues to evolve, the Postal Service would have to continuously review and revise the list, eliminating the certainty the list was intended to create. Second, as explained above in a different context, the Postal Service would have to define each item and apply it to an individual mailing. Again, we believe that this effort would lead to significant administrative problems.

A number of commenters also expressed concern with the proposed ''purpose'' test, believing it might lead to inconsistent decisions. We disagree. An ''exclusive purpose'' test should be much more consistently applied than a ''primary purpose'' test; there is no need to weigh various purposes against each other to determine which is predominant or ''primary.'' Instead, the only issue is whether there is a purpose for inclusion of the personal information other than the support of an advertisement or solicitation.

Other commenters expressed concern about how postal employees will discern such a purpose, apparently believing that employees will attempt to do so based on their perception of the mailer's intent, by ''reading the mind'' of the mailer. If we were asking this task of employees we would recognize that the commenters raised a valid concern. However, employees will not attempt to make a subjective determination of the mailer's intent. As explained in the proposal, employees will be trained to ''make a determination of mailpiece eligibility based on the mailpiece itself'' (*see* 69 FR 20843). Employees will not attempt to ''read the mailer's mind'' or make decisions based on their personal knowledge or belief as to the mailer's intention, but will make decisions based on the specific contents of the mailpiece.

For example, a recent case involved summaries of expenditures over a specific time period (such as a year or quarter year). Where such pieces indicate that the information can be used to assist in tax preparation, for planning or budgeting purposes, or simply for the addressee's records, that language indicates that the purpose of the personal information, at least in part, is not to support an advertisement. A second example concerns the nonprofit solicitation described above. If the mailpiece stated that the information about the addressee's previous donation could serve as a receipt or be used for a tax record, that statement would indicate that there is a purpose for the information in addition to supporting the charitable solicitation.

In addition to these administrative concerns, a number of commenters requested more guidance as to what constitutes ''personal information.'' Some commenters suggest a list of information considered ''personal.'' Again, such suggestions raise administrative concerns. First, if the Postal Service were to publish such a list, it would be subject to continuous review and change as mailer practices evolve. Second, we suspect that we would be called upon to define each item and apply those definitions in the context of individual mailings. Again, we believe this application would lead to significant administrative problems.

The proposal (69 FR 20843) did provide significant guidance about personal information. It explained that personal information includes ''any information specific to the addressee'' and need not be unique to the addressee. This policy is the same as exists today. Additionally, we again point out that employees are trained to determine whether information is personal on the basis of the mailpiece itself. Our Customer Support Ruling concerning proxy statements (CSR PS–159) provides a good example. When a proxy card contains the number of shares without identifying the information, postal employees cannot determine what the number represents or whether it is personal to the addressee. Accordingly, it would not be considered personal information. In contrast, when the number is labeled ''shares,'' it is clear what the number represents, and that it is personal information to the addressee.

One of the comments by an organization representing the interests of nonprofit organizations took issue with the language in the proposed rule that requires the advertising or solicitation to be ''explicit.'' The commenter argued that mailers may sometimes prefer a subtle sell to one that ''yells at the addressee.''

This comment appears to be based on a misperception of the proposal. The Postal Service is not seeking to direct mailers' advertisement copy. The rule does not require a sell that ''yells at the addressee.'' Rather, it requires that the mailpiece be clear what product or service is offered for sale or lease, no matter how hard or soft the advertiser's copy. Moreover, if the product or service offered is not identified in the mailpiece, it is unlikely that the personal information could be directly related to it.

Although we are not adopting the specific changes to the standards suggested by mailers concerned about the consistent application of our policies, we remain sensitive to the issues raised by these customers. We are taking a number of steps to alleviate these concerns and ensure the consistent application of the rules. We will undertake extensive training of postal personnel, including training emphasizing that these mail classification decisions must be based upon the content of the mailpiece, rather than the employee's perception or personal belief concerning the purposes of the mailer or the mailpiece. Second, consistent with the recommendations of a number of commenters, we are reviewing our CSRs on these issues. CSRs are ''case studies'' publicly available on the Postal Service's Postal Explorer Web site (*http://pe.usps.gov*) and provide specific guidance concerning the application of mailing standards. Current CSRs will be updated and re-issued in harmony with the effective date of the new standards. Moreover, both in advance of and following the effective date of the new standard, the Postal Service will consider and issue new CSRs concerning ''cases'' that have arisen, or that are expected to arise, under the new standards.

Finally, the Postal Service is willing to provide mailers with advance rulings, during the planning or pre-production stages of their mailings, so that customers will have certainty regarding the prices they will be asked to pay at the acceptance dock. This guidance is generally already available to mailers on an informal, local basis, and some mailers routinely take advantage of this opportunity. The Postal Service plans to expand the availability of these types of rulings.

Several of the remaining commenters, noting privacy and security issues, urged that certain types of mailings not be permitted to be entered as Standard Mail to protect highly personal information. One such commenter suggested that the Postal Service roll back the use of personal information in Standard Mail to the ''permissible written additions'' (*e.g.*, name of the addressee and marks, numbers, names, or letters describing the contents) customarily allowed in Standard Mail prior to the precedent rulemaking of the 1980s upon which this clarification is based.

For the reasons discussed above, the Postal Service will not classify mail based on the specific nature of the personal information provided in the mailpiece or provide a list of personal information required to be sent as First-Class Mail. We note, nonetheless, that one effect of this rulemaking will be that more mail will be classified properly. That is, mail required by standard to be entered as First-Class Mail due to the inclusion of personal information will be identified and entered as First-Class Mail. Personal information can be included in Standard Mail only in limited circumstances, when the exclusive reason for inclusion of all of the personal information is to support the advertising or solicitation in the mailpiece. Thus, it is possible that an additional consequence of this rulemaking will be to reduce the

amount of personal information in Standard Mail.

A small number of commenters were concerned that the proposed rule raises First Amendment issues. For one, on behalf of nonprofit organizations, it is argued that ''[C]haritable appeals for funds * * * involve a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.'' This argument appears to acknowledge that the proposed standards are based on content of the mail and the assertion that the test may not be administered consistently.

It is true that the proposed eligibility standards for First-Class Mail and Standard Mail, like those that exist today for all mail classes, are based on the content of the mailpiece. These standards are based on the DMCS (as well as current and former statutes), and the Postal Service is required to follow them in the Domestic Mail Manual. The Postal Service is not denying service based on content, but instead is classifying the mail.

We also disagree, for the reasons explained above, that administration of the proposed rule, with the modifications adopted herein, will be difficult or will lead to inconsistency. On the contrary, we believe these changes will ease efforts to classify First-Class Mail and Standard Mail for both postal customers and postal employees.

For these reasons, the Postal Service adopts the proposed rule with the changes stated above.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

E Eligibility

* * * * *

E100 First-Class Mail

E110 Basic Standards

[Renumber current 2.0 through 5.0 as 4.0 through 7.0. Replace current 1.0 with new 1.0, 2.0, and 3.0, as follows:]

1.0 DESCRIPTION OF SERVICE

1.1 Service Objectives

First-Class Mail receives expeditious handling and transportation. Service objectives for delivery are 1 to 3 days; however, delivery time is not guaranteed.

1.2 Rate Options

First-Class Mail offers the flexibility of single-piece rates, and discounted rates for mailings of 500 or more pieces that weigh 13 ounces or less.

1.3 Mailable Items

First-Class Mail may be used for any mailable item, including postcards, letters, flats, and small packages. Customized MarketMail under E660 and other restricted material as described in C020 may not be mailed as First-Class Mail.

2.0 DEFINING CHARACTERISTICS

2.1 Inspection of Contents

First-Class Mail is closed against postal inspection. Federal law and Postal Service regulations restrict both opening and reviewing the contents of First-Class Mail by anyone other than the addressee.

2.2 Forwarding Service

The price of First-Class Mail includes forwarding service to a new address for up to 12 months.

2.3 Return Service

The price of First-Class Mail includes return service if the mailpiece is undeliverable.

2.4 Extra Services Exclusive to First-Class Mail

First-Class Mail is the only class of mail eligible to receive the following extra services: registered mail service and certified mail service.

2.5 Additional Extra Services

Additional extra services available with First-Class Mail are certificate of mailing service, COD service, Delivery Confirmation service (parcels only), insured mail service (merchandise only), return receipt service, restricted delivery service, Signature Confirmation service (parcels only), and special handling. See S900.

3.0 CONTENT STANDARDS

3.1 Bills and Statements of Account

Bills and statements of account must be mailed as First-Class Mail (or Express Mail) as follows:

a. Bills and statements of account assert a debt in a definite amount owed by the addressee to the sender or a third party. In addition, bills include a demand for payment; statements of account do not include a demand for payment. The debt does not have to be due immediately but may become due at a later time or on demand. The debt asserted need not be legally collectible or owed.

b. Bills and statements of account do not need to state the precise amount due if they contain information that would enable the debtor to determine that amount.

3.2 Personal Information

Mail containing personal information must be mailed as First-Class Mail (or Express Mail). Personal information is any information specific to the addressee.

3.3 Handwritten and Typewritten Material

Mail containing handwritten or typewritten material must be mailed as First-Class Mail (or Express Mail).

3.4 Material Not Required to be Mailed as First-Class Mail

Mail eligible for Standard Mail or Package Services rates under E610 or E700 is not required to be mailed as First-Class Mail or Express Mail.

* * * * *

E600 Standard Mail

E610 Basic Standards

[Renumber current 3.0 through 9.0 as 4.0 through 10.0. Replace current 1.0 and 2.0 with new 1.0, 2.0, and 3.0, as follows:]

1.0 DESCRIPTION OF SERVICE

1.1 Service Objectives

Standard Mail may receive deferred handling. Service objectives for delivery are 2 to 9 days; however, delivery time is not guaranteed.

1.2 Quantity

Standard Mail provides economical rates for mailings of 200 or more pieces or at least 50 pounds of mail.

2.0 DEFINING CHARACTERISTICS

2.1 Mailpiece Weight Limit

All Standard Mail pieces—letters, flats, and small packages—must weigh less than 16 ounces.

2.2 Preparation Requirements

Standard Mail is subject to specific volume, marking, and preparation requirements.

2.3 Inspection of Contents

Standard Mail is not sealed against postal inspection.

2.4 Forwarding Service

The price of Standard Mail does not include forwarding service. Forwarding is available under F010.5.3.

2.5 Return Service

The price of Standard Mail does not include return service. Return service is available under F010.5.3 for an additional fee.

2.6 Extra Services

Extra services available with Standard Mail are insured mail service (bulk insurance only), certificate of mailing service (bulk certificate of mailing only), return receipt for merchandise service, and Delivery Confirmation service (parcels only). See S900.

2.7 Periodicals

Authorized Periodicals may not be entered as Standard Mail unless permitted by standard.

2.8 Identical Pieces

The contents of printed matter in a Standard Mail mailing must be identical to a piece sent to at least one other addressee. Standard Mail may include the addressee's name and address but may not transmit personal information except as permitted under 3.0.

3.0 CONTENT STANDARDS

3.1 Personal Information

Personal information may not be included in a Standard Mail mailpiece unless all of the following conditions are met:

a. The mailpiece contains explicit advertising for a product or service for sale or lease or an explicit solicitation for a donation.

b. All of the personal information is directly related to the advertising or solicitation.

c. The exclusive reason for inclusion of all of the personal information is to support the advertising or solicitation in the mailpiece.

3.2 Bills and Statements of Account

Mail containing bills or statements of account as defined in E110.3.0 may not be entered as Standard Mail except under the conditions described in 5.2.

3.3 Handwritten and Typewritten Matter

Mail containing handwritten or typewritten matter may not be entered as Standard Mail except under the conditions described in 4.0.

An appropriate amendment to 39 CFR part 111 will be published to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–23646 Filed 10–26–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA208–4231; FRL–7822–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania VOC and NO_X RACT Determinations for National Fuel Gas Supply Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision was submitted by the Pennsylvania Department of Environmental Protection (DEP) to establish and require reasonably available control technology (RACT) for the National Fuel Gas Supply Corporation located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 26, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Betty Harris, (215) 814–2168, or by e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 2003, the Pennsylvania DEP submitted formal SIP revisions to establish RACT for two sources of VOC and NO_X located in Pennsylvania. On May 24, 2004 (69 FR 29444), EPA published a direct final rule (DFR) approving revisions to DEP-issued operating permits which establish and require RACT for the National Fuel Gas Supply Corporation's Roystone Compressor Station located in Sheffield, Warren County, Pennsylvania (OP 62–141F) and the Crompton Corporation's facility located in Fairview Township, Butler County, Pennsylvania (OP 10–037). A description of the RACT determinations and EPA's rationale for approving them were provided in the May 24, 2004 DFR and will not be restated herein. In accordance with direct final rulemaking procedures, on May 24, 2004 (69 FR 29480), EPA also published a companion notice of proposed rulemaking on these SIP revisions inviting interested parties to comment on the DFR. On May 26, 2004, EPA received adverse comment on its approval of the RACT determination for National Fuel Gas and Supply Corporation's Roystone Compressor Station (National). EPA received no adverse comments on its approval of the RACT determination for the Crompton Corporation's facility, and, therefore, EPA's May 24, 2004 DFR approving DEP's RACT determination for the Crompton facility became effective on July 23, 2004. On July 2, 2004 (69 FR 40324), due to receipt of the adverse comment on its approval of the DEP's RACT determination for National, EPA published a partial withdrawal of the DFR, specifically withdrawing its final rule approving DEP's RACT determination for National. A summary of the adverse comment and EPA's responses to the comment are provided in Section II of this document.

II. Public Comment and EPA Responses

Comment: On May 26, 2004, a citizen submitted adverse comment on EPA's approval of the DEP's RACT determination for National. The commenter states that the allowable NO_X limitation imposed by the DEP on National's Units 1, 2 and 3 should be decreased from 5.3 lbs per hour to 1.3 lbs per hour and that all the other NO_X rates set in the DEP's permit should be cut in half. The commenter contends that rather than simply re-stating state law which is too low, Federal officials should impose higher standards.

Response: EPA disagrees with the commenter. The EPA has no authority to modify the submitted RACT rules as requested by the commenter. The CAA requires that a state determine and impose RACT for existing major sources of NO_X and VOCs located in ozone nonattainment areas and the Ozone Transport Region. Those RACT requirements are then to be submitted to

EPA as revisions to the SIP. EPA can only take action on a SIP revision as it submitted by a state, and cannot, through rulemaking action on a SIP revision, alter the state's submission to make its requirements more (or less) stringent. Therefore, even if EPA agreed that the commenter submitted convincing evidence that the state-submitted limits are not RACT for this facility (which, as explained below, we do not), EPA could not modify the limits as requested by the commenter, but instead could only disapprove the SIP revision submitted by the State.

With regard to the criteria EPA uses to determine whether to approve or disapprove RACT SIP revisions submitted by the Pennsylvania DEP pursuant to 25 Pa Code Chapter 129.91–129.95, we look to the provisions of those SIP-approved generic RACT regulations (*see* May 3, 2001 **Federal Register**, 66 FR 22123) and to the requirements of the Clean Air Act and relevant EPA guidance. In approving Pennsylvania's generic RACT regulations, 25 Pa Code Chapters 121 and 129, EPA, thereby, approved the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of* NO_X *and VOCs,* requires subject facilities to submit a RACT plan proposal to the DEP in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, impose the resulting RACT determination in an operating permit or plan approval, and submit each RACT determination to EPA for approval as a SIP revision. EPA reviews the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by the Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA first reviews a SIP submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT, respectively. Then EPA reviews the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then we may add additional EPA-generated analyses to the record of our rule to approve or disapprove the SIP revision. EPA's review of the Commonwealth of Pennsylvania's submission of its RACT determination for National imposed in DEP operating permit (OP 62–141F) indicates that the requirements of its SIP-approved generic RACT regulation 25 Pa Code Chapter 129.91–129.95 have been met. *See* preamble of the Direct Final Rule, May 24, 2004, (69 FR 29444). The commenter did not submit any supporting technical information to support that the suggested alternative emission limitations for National's Roystone Compressor Station are RACT. Additionally, the commenter did not submit any justification or analysis to suggest that the RACT limits submitted by the State are inconsistent with the State's RACT regulations, the CAA or EPA guidance. Because the commenter has submitted no new information that would cause us to reconsider our analysis that accompanied the proposed rule, we continue to believe that analysis supports our approval of the RACT limit for National.

III. Final Action

EPA is approving the Pennsylvania DEP's RACT requirements for the National Fuel Gas Supply Corporation's Roystone Compressor Station, located in Sheffield, Warren County, Pennsylvania. EPA is approving this RACT SIP submittal because DEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The DEP has also imposed record keeping, monitoring, and testing requirements on National Fuel Gas Supply Corporation's Roystone Compressor Station sufficient to determine compliance with the applicable RACT determinations.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for one named source.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 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 pertaining to RACT for National Fuel Gas Supply Corporation's Roystone Compressor Station, located in Sheffield, Warren County, Pennsylvania, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 23, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(213)(i)(B)(*1*) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(213) * * *

(i) * * *

(A) * * *

(B) * * *

(*1*) National Fuel Gas Supply Corp., Roystone Compressor Station, Sheffield, Warren County, OP 62–141F, effective date April 1, 2003.

* * * * *

[FR Doc. 04–23951 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA203–4218a; FRL–7821–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for two major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on December 27, 2004 without further notice, unless EPA receives adverse written comment by November 26, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by PA203–4218 by one of the following methods:

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

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

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

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

Instructions: Direct your comments to Docket ID No. PA203–4218. 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.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168 or via e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or

Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area, and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT, as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

II. Summary of the SIP Revision

On August 15, 2003, PADEP submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and NO_X. This rulemaking pertains to two of those sources, namely, Tennessee Gas Pipeline Company (TGP), Station 321, located in Susquehanna County, Pennsylvania and Tennessee Gas Pipeline Company (TGP), Station 219, located in Mercer County, Pennsylvania. The RACT determinations and requirements are included in operating permits (OP) issued by PADEP. The RACT requirements imposed by PADEP and submitted to EPA for approval as SIP revisions are described in the following paragraphs.

A. Tennessee Gas Pipeline Company (TGP) (Station 321)

The TGP Company (Station 321) is in the business of transporting natural gas and operates an interstate pipeline system. In this instance, RACT has been established and imposed by PADEP in an operating permit. On August 15, 2003, PADEP submitted operating permit No. OP–58–0001A to EPA as a SIP revision. This operating permit incorporates RACT determinations for three (3) Solar Centaur Recuperated natural gas-fired turbines, one (1) Waukesha backup generator, one (1) boiler, two (2) furnaces, and thirteen (13) heaters. The RACT provisions of Section 129.91 through 129.95 limit NO_X emissions from each of the Solar Centaur Recuperater turbines. These units shall not exceed 140 ppmdv corrected at 15% oxygen. The NO_X emission limits apply at all times except during periods of start-up and shut-down, however the duration of start-up or shut-down shall not exceed one hour per occurrence. RACT requirements under 25 PA Code Section 129.93 (c)(1) for two furnaces, one boiler, and thirteen heaters shall be installation, maintenance, and operation in accordance with manufacturer's specifications. These sources shall also be operated and maintained in accordance with good air pollution control practices.

Under the presumptive RACT requirements 25 Pa. Code Section 129.93(c)(5), the 228 brake horsepower backup generator shall not operate more than 500 hours in any consecutive 12 month period. This source shall also be operated and maintained in accordance with good air pollution control practices. TGP shall perform semi-annual NO_X tests on the three Solar Centaur turbines using an PADEP approved portable exhaust gas analyzer. The results from these tests shall be used to demonstrate compliance with NO_X emissions limits. The frequency of portable analyzer tests maybe altered by PADEP based on the test results and reserve the rights to require stack tests in accordance with EPA reference methods should the data from the portable analyzer warrant.

TGP shall maintain records in accordance with the recordkeeping requirements of 25 PA Code Section 129.95 which shall include: (a) The number of hours per calendar year and (b) the amount of fuel used per calendar year in each of the sources identified in the operating permit. These records shall be retained for a minimum of 2 years and shall be made available to PADEP upon request.

B. Tennessee Gas Pipeline Company (TGP) (Station 219)

The TGP Company (Station 219) operates a natural gas transmission pipeline which transports and distributes gas throughout the area. In this instance, RACT has been established and imposed by PADEP in an operating permit. On August 15, 2003, PADEP submitted operating permit No. OP–43–0272 to EPA as a SIP revision. This operating permit incorporates RACT determinations for fourteen (14) Cooper-Bessemer engines, four (4) heaters, one (1) boiler, one (1) office and utility furnace and three (3) auxiliary engines. NO_X emissions from each of the following Cooper-Bessemer engines shall not exceed the following: Six GMV–IOTF 31.6 lb/hr., Two GMV–IOTFS 11.9 lb/hr., Five GMVA–10 33.3 lb/hr., One 16V–250 48.5 lb/hr. The 6 Cooper-Bessemer GMV–IOTF engines shall be set and maintained with an ignition timing of 6 degrees before top dead center, which corresponds to a 3 degree retard from a standard ignition timing of 9 degrees before top dead center. The 5 Cooper-Bessemer GMV10 engines shall be set and maintained with an ignition timing of 8 degrees before top dead center, which corresponds to a 4 degree retard from a standard ignition timing of 12 degrees before top dead center. These engines shall also be operated and maintained in accordance with good air pollution control practices. RACT requirements under 25 PA Code Section 129.93 (c)(1), 1 boiler, 4 furnaces and heaters shall be installation, maintenance, and operation in accordance with manufacturer's specifications. These sources shall also be operated and maintained in accordance with good air pollution control practices. RACT requirements under 25 PA Code Section 129.93 (c) (3), for 3 auxiliary engines shall be set and maintained at 4 degree retarded before top dead center relative to standard ignition timing. These engines shall be maintained and operated in accordance with manufacturer's specifications and with good air pollution control practices. Rules and Regulations under PADEP RACT provisions of Section 129.91 through 129.95, volatile organic compounds (VOC) emissions from one 16–V250 Cooper-Bessemer engine shall not exceed 6 lbs per hour and 26.3 tons per year calculated on a 12-month rolling basis. The VOC RACT for all sources shall be operated and maintained in accordance with good air pollution control practices. TGP (Station 219) shall perform semi-annual NO_X tests on all 14 Cooper-Bessemer engines using PADEP approved portable exhaust gas analyzer. The results from these tests shall be used to demonstrate compliance with NO_X emissions limits.

III. EPA's Evaluation of the SIP Revisions

EPA is approving the operating permits issued to the two Tennessee Gas Pipeline Companys' by PADEP as described in Section II. EPA is approving them as SIP revisions because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. Final Action

EPA is approving revisions to the Commonwealth of Pennsylvania's SIP which establish and require RACT for these two major sources of VOC and NO_X: (1) Tennessee Gas Pipeline Company, Station 321, located in Susquehanna County, Pennsylvania (OP–58–0001A); (2) Tennessee Gas Pipeline Company, Station 219, located in Mercer County, Pennsylvania (OP–43–0272). EPA is publishing this rule without prior proposal because we view

this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on December 27, 2004 without further notice unless we receive adverse comment by November 26, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the Commonwealth's source-specific RACT requirements to control NO_X and VOC from two individual sources 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, Nitrogen dioxide, Ozone, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: September 22, 2004.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(218) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(218) Revisions pertaining to VOC and NO_X RACT for Tennessee Gas Pipeline Company, Station 321, located in Susquehanna County, Pennsylvania; and Tennessee Gas Pipeline Company, Station 219, located in Mercer County, Pennsylvania submitted by the Secretary of the Pennsylvania Department of Environmental Protection on August 15, 2003.

(i) Incorporation by reference.

(A) Letter submitted on August 15, 2003 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT

determinations, in the form of operating permits:

(B) Operating permit (OP):

(*1*) Tennessee Gas Pipeline Company, Station 321, Susquehanna County, OP–58–0001A, effective date April 16, 1999.

(*2*) Tennessee Gas Pipeline Company, Station 219, Mercer County, OP–43–0272, effective date April 7, 1998.

(ii) Additional Material—Additional materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(218)(i) of this section.

[FR Doc. 04–23940 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA284–0462; FRL–7811–2]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Bay Area Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on October 20, 2003 and concern volatile organic compound (VOC) emissions from solvents and surface cleaning operations when coating large appliances, metal furniture, and miscellaneous metal parts. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on November 26, 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 and,

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

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

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at (415) 947–4111, or via email at *wamsley.jerry@epa.gov.*

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

I. Proposed Action

On October 30, 2003 (68 FR 61782), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
BAAQMD	8–14	Surface Preparation and Coating of Large Appliances and Metal Furniture.	10/16/02	04/01/03
BAAQMD	8–19	Surface Preparation and Coating of Miscellaneous Metal Parts and Products.	10/16/02	04/01/03

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties.

1. Adrienne Bloch, Communities for a Better Environment (CBE); letter and electronic mail dated November 21, 2003.

2. Marc Chytilo, Transportation Solutions Defense and Education Fund (TRANSDEF); co-signee same letter referenced above. The comments and our responses are summarized below.

Comment: EPA should disapprove or defer action on BAAQMD Rules 8–14 and 8–19 because on July 23, 2003 a State Court ruled that the BAAQMD did not follow mandated state law in adopting the 2001 SIP stationary source control measure SS–13 (Rules 8–14 and 8–19 in a different form). The State Court found that the BAAQMD's initial study and negative declarations under the California Environmental Quality Act (CEQA) for the 2001 Ozone Attainment Plan (OAP), including SS–13, were inadequate. Given that the BAAQMD has not met CEQA's substantive and procedural requirements, the commenters assert that the BAAQMD has neither legal authority to adopt Rules 8–14 and 8–19, nor sufficient procedural evidence that they have followed State law in adopting and submitting Rules 8–14 and 8–19. Consequently, EPA should reject the rule revisions concerning Rules 8–14 and 8–19 because they violate the Clean Air Act (CAA) at Section 110(a)(2)(E) and EPA regulations at 40 Code of Federal Regulations (CFR), Part 51, Appendix V.

The CAA Section 110(a)(2)(E) does not allow EPA to approve a SIP revision unless the State can assure that it has authority under state and local law to carry out the SIP revision. CFR 40 Part 51, Appendix V requires that a State provide evidence of legal authority to adopt a SIP revision and show that the State followed all of its procedural requirements.

EPA Response: In subsequent actions, BAAQMD and the commenters, CBE and TRANSDEF, appealed the July 23, 2003 State Court decision. In April 2004, BAAQMD, CBE, and TRANSDEF entered into a settlement agreement that vacated the July 23, 2003 State Court judgement. As a part of the settlement, CBE and TRANSDEF agreed to dismiss their lawsuit against BAAQMD that challenged the 2001 OAP on CEQA and other grounds and relinquish all claims associated with the lawsuit. Consequently, we are left with no substantive basis requiring that we adjudicate CBE and TRANSDEF's claim that we should not act on Rules 8–14 and 8–19 as submitted.

However, it should be noted that as part of BAAQMD's September 2002 adoption action on Rules 8–14 and 8–19, the district published its ''Initial Study/Negative Declaration for Amendments to the BAAQMD Regulation 8, Rules 4, 14, 19, 31, and 43 (Surface Coating Rules.)'' This

document provided the basis for the BAAQMD Board's negative declaration within the district's resolution of adoption and for satisfying its CEQA obligations. In turn, this negative declaration and other submittal documents provided the basis for EPA's May 13, 2003 completeness finding on Rules 8–14 and 8–19.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. 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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. section 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. section 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 December 27, 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 6, 2004.

Laura Yoshii,

Acting 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)(315)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(315) * * *

(i) * * *

(A) * * *

(*3*) Rule 8–14, adopted on March 7, 1979 and amended on October 16, 2002; and Rule 8–19, adopted on January 9, 1980 and amended on October 16, 2002.

* * * * *

[FR Doc. 04–23950 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD170–3113a; FRL–7819–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions from Yeast Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The SIP revisions pertain to the amendments of a regulation that control volatile organic compound (VOC) emissions from yeast manufacturing facilities. EPA is approving these revisions in accordance with the

requirements of the Clean Air Act (CAA).

DATES: This rule is effective on December 27, 2004 without further notice, unless EPA receives adverse written comment by November 26, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by MD170–3113 by one of the following methods:

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

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

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

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

Instructions: Direct your comments to Docket ID No. MD170–3113. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Maryland Department of the Environment (MDE), 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 2004, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of amendments to COMAR 26.11.19.17—Control of VOC Emissions from Yeast Manufacturing. Yeast is manufactured in large reaction vessels referred to as fermenters. In Maryland, most of the yeast manufactured is baker's or nutritional yeast. The yeast is manufactured in batches with an average fermenting time of 18 hours for each batch.

II. Summary of SIP Revision

The amendments to COMAR 26.11.19.17 add the following definitions: (a) ''nutritional yeast'' means a yeast that becomes an ingredient in dough for bread or any other yeast-raised baked product; or a nutritional food additive intended for consumption by humans; and (b) ''specialty yeast'' means a yeast that is used in the production of beer, wine or alcoholic beverages or in the production of ethanol. The amendment also limits the production of specialty yeast to less than one percent by weight of the total annual yeast production excluding specialty yeast batches that meet the emission limits for nutritional yeast. Compliance with this amendment shall be achieved beginning July 1, 2004 and determined with the use of continuous emission monitors. In addition, the amendment removed the requirement to conduct periodic stack tests because the VOC emissions are now determined by continuous monitors.

The standards in the amended regulation shall be met for at least 98 percent of all nutritional yeast batches in each 12-month period. The amended regulation also requires semi-annual reports submitted to MDE by the end of the month following each 6-month period. The semi-annual reports shall include: (a) A summary of the number of batches for each month and calculations showing the percent of batches that failed to meet the VOC standards for each month; (b) calculations showing the percent of batches that failed to meet the VOC standards during the 6-month period; and (c) calculations showing the percent of batches, by fermenter, that were not monitored during the 6-month period.

III. Final Action

EPA is approving the amendments to COMAR 26.11.19.17, ''Control of VOC Emissions from Yeast Manufacturing,'' submitted by MDE on July 12, 2004. Implementation of these amendments will result in the reduction of VOC emissions from yeast manufacturing facilities.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 27, 2004 without further notice unless EPA receives adverse comment by November 26, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 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, pertaining to the amendments to control VOC emissions from yeast manufacturing facilities in Maryland, 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, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 20, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. Section 52.1070 is amended by adding paragraph (c)(189) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(189) Revisions to the Maryland Regulations on the Control of Volatile Organic Compound Emissions from Yeast Manufacturing submitted on July 12, 2004 by the Maryland Department of the Environment (MDE):

(i) Incorporation by reference.

(A) Letter of July 12, 2004 from the Maryland Department of the Environment transmitting the amendments to the control of VOC from yeast manufacturing.

(B) The following revisions to COMAR 26.11.19.17, Control of VOC Emissions from Yeast Manufacturing with an effective date of June 21, 2004.

(*1*) Addition of paragraphs .17A(3) and .17A(4) of existing paragraphs .17A(3) and .17A(4) to .17A(5) and .17A(6) respectively.

(*2*) Addition of paragraph .17B(2), replacing existing paragraph .17B(2).

(*3*) Revisions to paragraphs .17B(3), .17C(2), .17C(3), .17D (introductory sentence), .17D(1), and .17D(2).

(*4*) Addition of paragraph .17E; renumbering of existing paragraph .17E to .17F.

(*5*) Addition of paragraphs .17F(1) and .17F(2), replacing existing paragraphs .17E(1) and .17E(2).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(191)(i) of this section.

[FR Doc. 04–23948 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2004–WV–0001; FRL–7821–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Determination of Attainment and Redesignation of the City of Weirton PM_{10} Nonattainment Area to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is determining that the City of Weirton PM_{10} nonattainment area (the Weirton area) has attained the National Ambient Air Quality Standard (NAAQS) for PM_{10}. This determination is based on three years of complete, quality-assured, ambient air quality monitoring data for the years 2000–2002 which demonstrate that the NAAQS for PM_{10} has been attained in the area. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements along with other related requirements of the Clean Air Act (CAA), are no applicable to the Weirton area. EPA is also approving the

West Virginia Department of Environmental Protection's (WVDEP) request to redesignate the Weirton area to attainment of the NAAQS for PM_{10}. In conjunction with its approval of this redesignation request, EPA is also approving WVDEP's 10-year maintenance plan for the Weirton area as a revision to the West Virginia State Implementation Plan (SIP). EPA is taking these actions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on December 27, 2004 without further notice, unless EPA receives adverse written comment by November 26, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–WV–0001 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *Morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–WV–0001, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to RME ID No. R03–OAR–2004–WV–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.docket.epa.gov/rmepub/,* 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are 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 RME 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of material to be incorporated by reference are available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304–2943.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068 , or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the CAA, EPA may redesignate areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3) of the CAA. These criteria include full approval of a maintenance plan for the area. The requirements for a maintenance plan are found in section 175A of the CAA. The Weirton area, located in Hancock County and Brooke County (part), was classified as an area likely to be in violation of the PM_{10} NAAQS on August 7, 1987 (52 FR 29383). On August 14, 1989, the Oak Street monitoring site in the Weirton area recorded the fourth exceedance of the 24-hour PM_{10} NAAQS in a three-year period. The Weirton area was designated by EPA as a moderate PM_{10} nonattainment area on December 21, 1993 (58 FR 67334). The Weirton area has monitored attainment of the NAAQS for PM_{10} since 1998.

II. Summary of State Submittal

On May 24, 2004, the WVDEP submitted a redesignation request and maintenance plan for the Weirton moderate PM_{10} nonattainment area. West Virginia's May 24, 2004 submittal provides for the attainment and maintenance of the NAAQS for PM_{10} in the Weirton area and satisfies the requirements of section 107(d)(3)(E) of the CAA, necessary for redesignation. When approved, the maintenance plan and its contingency measures submitted by the WVDEP for the Weirton area will become part of the West Virginia SIP.

The WVDEP's submittal includes an analysis of quality-assured, ambient air quality monitoring data documenting attainment of the NAAQS for PM_{10} in the Weirton area and additional documentation to satisfy EPA's policy entitled ''Reasonable Further Progress, Attainment demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' signed by John S. Seitz and dated May 10, 1995, commonly referred to as the Clean Data Policy (CDP). EPA is making a clean data determination under its May 10, 1995 CDP for the Weirton area thereby waiving certain part D requirements related to the attainment demonstration, reasonable further progress and their associated contingency measures for the Weirton area. Details of how West Virginia has satisfied the May 10, 1995 CDP are found in III.B.2. of this document.

III. Description and Evaluation of the Redesignation and Maintenance Plan

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the NAAQS; (2) The Administrator has fully approved the applicable implementation plan for the area under Section 110; (3) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions

resulting from implementation of the applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and, (5) The State containing such area has met all requirements applicable to the area under section 110 and part D. The EPA has reviewed the redesignation request submitted by the WVDEP on May 24, 2004 for the Weirton area and finds that its meets the five requirements for redesignation found in section 107(d)(3)(E) of the CAA.

A. Weirton Area Has Data Showing Attainment of the NAAQS for PM_{10}

EPA's review of the monitoring data submitted by West Virginia indicates that the Weirton area has attained, and continues to attain, both the 24-hour and annual PM_{10} standard. The PM_{10} monitoring network in the Weirton area consists of four monitors within the nonattainment area. The three years of data used in the redesignation request are the years 2000–2002, inclusive. The maximum annual average for the 3-year period is 32 μ/m^3. The maximum 24-hour value is 112 μ/m^3. Although the May 24, 2004 formal redesignation request uses 2000–2002 monitoring data, the Weirton area has, in fact, monitored attainment from the years 1998 through 2003, and continues to monitor attainment of the NAAQS for PM_{10}.

B. Weirton Area Has a Fully Approved SIP Under Section 110(k) and Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

1. Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the state after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, and provisions for public and local agency participation. The May 24, 2004 SIP submittal provided documentation of that the West Virginia SIP satisfies all of the section 110 and part D requirements of the CAA which apply to the Weirton area. EPA has concluded that the West Virginia SIP for the Weirton area satisfies all of the section 110 SIP requirements of the CAA.

2. Part D Requirements

Before the Weirton area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D of the CAA. As stated previously, EPA had determined that certain part D requirements are no longer required to be met by the Weirton area under EPA's May 10, 1995 CDP. The clean data area approach applies the policy already in place for ozone nonattainment areas to selected PM_{10} nonattainment areas. The CDP policy reduces the requirements for submittal of certain requirements in nonattainment areas which are demonstrating attainment with the NAAQS. For areas meeting the five criteria discussed in the CDP, states are not required to submit SIP revisions concerning reasonable further progress, attainment demonstration or their associated contingency measures. West Virginia has met the criteria of the CDP for the Weirton area as follows:

(a) The area must be attaining the PM_{10} NAAQS with the three most recent years of quality assured air quality data. West Virginia has provided evidence of the Weirton area attaining the NAAQS for PM_{10}. There are four PM_{10} monitors within the Weirton area. There have been no exceedances of the 24-hour standard of 50 $\mu g/m^3$ during the past five years. The monitors have never recorded a violation of the annual PM_{10} standard of 150 $\mu g/m^3$. The Weirton area 24-hour value for calendar years 2000–2002, as found in EPA's Air Quality Subsystem (AQS), is 32 $\mu g/m^3$. The annual value for the Weirton area during the same time period is 112 $\mu g/m^3$.

(b) The State must continue to operate an appropriate PM_{10} air quality monitoring network, in accordance with 40 CFR part 58, in order to verify the attainment status of the area. In the maintenance plan submitted on May 24, 2004, which EPA is approving as part of this rulemaking, the State of West Virginia has committed to continue to monitor the Weirton area.

(c) The control measures for the area, which were responsible for bringing the area into attainment, must be approved by EPA. In its May 24, 2004 submittal, the WVDEP provides details on the emission reductions responsible for bringing the area into attainment. The primary control measures to achieve attainment include making permanent and enforceable the shutdown of specified steel manufacturing and processing facilities which occurred after the Weirton area was designated and classified nonattainment. The request for redesignation specifically cites to a Federally-enforceable consent order between State of West Virginia and the Weirton Steel Corporation. This consent order was approved as a revision to the West Virginia SIP on May 5, 2004 (69 FR 24986). The requirements of the consent order resulted in a permanent and enforceable reduction of 1345 tons per year of PM_{10}.

(d) An emissions inventory must be completed for the area. An emission inventory for the Weirton area was completed and submitted as part of the maintenance plan which EPA is approving as part of this rulemaking.

(e) EPA must make a finding that the area attained the 24-hour and annual PM_{10} NAAQS.

EPA published a notice in the **Federal Register** on May 16, 2001 announcing that the Weirton area had attained the NAAQS for PM_{10} (66 FR 27034). Pursuant to the May 10, 1995 CDP, EPA, in this rulemaking, is again determining that the Weirton area has attained the NAAQS for PM_{10}. This determination is based on three years of complete, quality-assured, ambient air quality monitoring data for the years 2000–2002. EPA has determined that West Virginia has met the requirements of the CDP. Therefore, the requirements under CAA section 172(c) for developing an attainment demonstrations, RFP demonstration and their associated contingency measures are waived due to the fact that the Weirton area, by satisfying the criteria of the CDP, has been determined by EPA to have already attained the NAAQS for PM_{10} and met RFP.

However, any requirements that are connected solely to designation or classification, such as new source review (NSR) and RACM/RACT, will remain in effect. Therefore, the consent order approved as a revision to the West Virginia SIP on May 5, 2004 (69 FR 24986) will remain in effect after the Weirton area is redesignated. The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5). The CAA and EPA guidance provide that the requirements of the part D nonattainment area NSR program will be replaced by the state's prevention of significant deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective immediately upon redesignation. West Virginia's regulations for its PSD permitting program were approved into the West

Virginia SIP on April 11, 1986 (51 FR 12518). Under the West Virginia SIP, the state's PSD permitting program will become fully effective in the Weirton area immediately upon its redesignation to attainment.

C. The Improvement in Air Quality in the Weirton Area Is Due to Permanent and Enforceable Measures

The emission reductions responsible for bringing the Weirton area into attainment have been made permanent and enforceable by the consent order between the State of West Virginia and the Weirton Steel Corporation (CO–SIP–C–2003–28). As discussed above, this consent order was approved as a revision to the West Virginia SIP on May 5, 2004 (69 FR 24986). These emission reductions are permanent and enforceable. Should any of the shutdown operations or facilities made permanent and enforceable by the consent order seek to be become operational, they would be subject to the West Virginia's SIP NSR requirements, including PSD once the Weirton area is redesignated.

D. West Virginia Has Submitted a Maintenance Plan for the Weirton Area Pursuant to Section 175A of the CAA

Section 175A of the CAA sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. If applicable, eight yeas after the redesignation, West Virginia must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measure with a schedule for implementation adequate to assure prompt correction of any air quality problems. The State of West Virginia submitted a PM_{10} Maintenance Plan for the Weirton, West Virginia Area on May 24, 2004. The maintenance plan and associated contingency measures are being approved into the SIP as part of this rulemaking.

Details of the Weirton area maintenance plan and how it satisfies the requirements of 175A are provided in the following paragraphs.

1. Emissions Inventory—West Virginia has submitted an Emission Inventory of sources in the Weirton area for calendar year 2001. The year 2001 is representative of the emissions in the Weirton area during the years 2000–2002, the three years for which quality assured ambient air quality data documenting attainment were submitted for Weirton area. By approving the maintenance plan, EPA is approving the emission inventory.

2. Maintenance demonstration—The maintenance plan includes an emission inventory of emission levels reflective of attainment in the Weirton area and limits emissions to those levels which ensure maintenance of the NAAQS for PM_{10} in the Weirton area. The PSD review and permitting requirements for any future major source construction of modification and the permanent and enforceable control measures on existing sources are provided in the maintenance plan. Subsequent to redesignation, any major source construction or modification will be subject to the PSD requirements found in West Virginia's SIP, including a demonstration to ensure protection and maintenance of the NAAQS and applicable PSD increments. By approving the maintenance plan, EPA is approving the maintenance demonstration.

3. Continuation of the monitoring network—West Virginia has indicated in the May 24, 2004 maintenance plan that it will continue to monitor for PM_{10} in the Weirton area in accordance with 40 CFR 53 and 58. By approving the maintenance plan, EPA is approving West Virginia's plan to continue to monitor for PM_{10} in the Weirton area.

4. Verification of Continued Attainment—The maintenance plan states that the WVDEP will review the monitoring data annually to verify continued attainment. WVDEP will also assess compliance of local facilities. If still required by the CAA, the Weirton area maintenance plan will be reassessed not later than eight years after the area is redesignated to attainment.

5. Contingency Plan—The WVDEP has indicated in the maintenance plan that it will rely on ambient air monitored data to determine the need to implement contingency measures. In the event of an exceedance of the PM_{10} standard, the WVDEP will review the monitored data, the local meteorology data, and the compliance of local facilities. If all facilities are in compliance with applicable SIP and permit emissions limits, the WVDEP will determine and impose additional control measures necessary to continue to maintain the NAAQS. Upon determination that three exceedances of the 24-hour PM_{10} standard have occurred within a three-year period the WVDEP will notify companies with emission sources of PM_{10} in the Weirton area that there may be a need to reduce PM_{10} emissions to address a potential violation of the NAAQS. Within six months of this notification, the companies must submit a detailed plan of action specifying additional control measures to reduce PM_{10} emissions, to be implemented no later than 18 months after the notification of a violation of the NAAQS. The additional control measures necessary to ensure attainment will be imposed by WVDEP and submitted to EPA for approval and incorporation into the SIP.

In summary, EPA has determined that West Virginia's May 24, 2004 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA, and is redesignating the Weirton area to attainment for PM_{10}. EPA is also approving the WVDEP's maintenance plan and its associated contingency measures for the Weirton area as a revision to the West Virginia SIP.

IV. Final Action

EPA is determining that the Weirton area has attained the NAAQS for PM_{10} and has met the requirements of the May 10, 1995 CDP. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements, along with other related requirements of the CAA, are not applicable to the Weirton area. EPA is approving the State of West Virginia's May 24, 2004 request to redesignate the Weirton area to attainment for PM_{10} and is approving the associated maintenance plan as a revision to the West Virginia SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment as there was opportunity for stakeholder input in the SIP development process. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 27, 2004 without further notice unless EPA receives adverse comment by November 26, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2004. Filing a petition for reconsideration by the Administrator of this final rule to redesignate the Weirton area to attainment for PM_{10} and approve the maintenance plan for the area 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 to approve West Virginia's redesignation request and maintenance plan for the Weirton PM_{10} area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air Pollution Control, National parks, Wilderness areas.

Dated: September 20, 2004.

Thomas C. Voltaggio,

Acting Deputy Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(60) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(60) The PM_{10} Maintenance Plan for the City of Weirton area submitted by the West Virginia Department of Environmental Protection on May 24, 2004.

(i) Incorporation by reference.

(A) Letter of May 24, 2004 from the West Virginia Department of Environmental Protection transmitting the redesignation request and maintenance plan for the City of Weirton PM_{10} area in Hancock and Brooke Counties (part).

(B) PM_{10} Maintenance Plan for the Weirton, West Virginia area, dated May 24, 2004.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(60)(i) of this section.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

■ 1. The authority citation for Part 81 continues to read as follows:

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

■ 2. In § 81.349, the table for ''West Virginia—PM_{10}'' is amended by revising the entry for Hancock and Brooke Counties (part): The City of Weirton to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Hancock and Brooke Counties (part): The City of Weirton	12/27/2004	Attainment.		
* * *	*	*	*	*

* * * * *

[FR Doc. 04–23945 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0243; FRL–7371–6]

L-Glutamic Acid and Gamma Aminobutyric Acid: Order Denying Objections to Issuance of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Order.

SUMMARY: By this order, EPA denies the objections filed by the Truth In Labeling Campaign (TLC) and additional citizens to a final rule issued June 21, 2001. That rule exempts from the requirement of a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) use of L-glutamic acid (LGA) and gamma aminobutyric acid (GABA) on all food commodities when applied/used in accordance with good agricultural practices. EPA is denying the objections because the Agency has evaluated these products and believes them to meet the statutory requirement of reasonable certainty of no harm.

DATES: This order is effective October 27, 2004.

FOR FURTHER INFORMATION CONTACT: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8810; fax number: (703) 308–7026; e-mail address: frazer.carol@epa.gov.

ADDRESSES: EPA has established a docket for this action under Docket identification number OPP–2004–0243. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. However, this action is of particular interest to TLC, the major objector to the use of LGA as a pesticide product and to Lucinda Larson, the only objector who specifically added GABA to her objection as well as LGA. Several other objectors expressed an objection to the **Federal Register** notice exempting the two chemicals from the requirement of a tolerance, without specifying either one. This action is also of interest to Emerald BioAgriculture Corporation, the manufacturer of AuxiGro™, the only pesticide product that uses LGA and GABA as active ingredients, as well as users of AuxiGro™ products. Since various different entities may be interested in this action, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

II. Background and Statutory Findings

A. What Action Is the Agency Taking?

From June 28, 2001 through January 14, 2002, TLC and others filed a series of objections to EPA's issuance of an exemption from the requirement of a tolerance under section 408 of the FFDCA for use of LGA and GABA on all food commodities when applied/used in accordance with good agricultural practices. EPA is denying the objections because it has reviewed all available data on these pesticides and maintains its conclusion that the uses of these pesticides are safe. None of the objectors filed a hearing request.

B. What Is the Agency's Authority for Taking This Action?

Section 408 of the FFDCA authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as ''tolerances.'' Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is ''adulterated'' under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes dietary exposure through food and drinking water and exposure other than dietary that occurs in non-occupational settings. In making safety determinations, EPA is required to consider, among other things, ''available information concerning the cumulative effects of the pesticide chemical residue and other substances that have a

common mechanism of toxicity.'' 21 U.S.C. 346a(b)(2)(D)(v). Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' 21 U.S.C. 346a(b)(2)(C). For pesticides that pose a threshold effect, EPA is directed to apply ''an additional tenfold margin of safety . . . to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.'' [hereinafter referred to as ''the children's safety factor''] Id. This provision additionally specifies that EPA ''may use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.'' Id. The procedure for establishing tolerance regulations is generally initiated by pesticide manufacturers through the filing with EPA of a petition requesting the establishment of a tolerance. See 21 U.S.C. 346a(d). EPA is required to publish notice of this petition as well as a summary of the petition prepared by the petitioner. Id. 346a(d)(3). After evaluation of the petition, EPA may issue a final tolerance regulation, a proposed tolerance regulation, or an order denying the petition. Id. 346a(d)(4). Once a final tolerance regulation is issued, any person may, within 60 days, file written objections to any aspect of this regulation and may also request a hearing on issues of fact raised by the objections. Id. 346a(g).

EPA regulations specify that if a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is 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 in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32. EPA's regulations specify that if no hearing is requested, or a requested hearing is denied, EPA will publish in the **Federal Register** its determination on each objection submitted. 40 CFR 178.37(a).

III. Regulatory and Procedural History

LGA and GABA are pesticides produced by Emerald BioAgriculture (formerly Auxein) Corporation. They are currently registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., for use on all food commodities (40 CFR 180.1187 and 180.1188) and exemptions for the requirement of tolerances covering all uses have been established under the FFDCA.

In 1987, EPA approved use of LGA as a plant nutrient inert for seed treatment [40 CFR 180.1001(d)].

In August 1997, EPA published a notice of the first application for a new pesticide product containing both of these active ingredients (62 FR 42782, August 8, 1997) (FRL–5735–1). This notice announced receipt of an application to register a pesticide product, AuxiGro WP (EPA File Symbol 70810–R) containing new active ingredients GABA: gamma aminobutyric acid at 29.2% and glutamic acid at 36.5%, not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the FIFRA, as amended. This product was a plant growth enhancer for use to increase yields and the quality of crop plants and early ripening in certain vegetables. EPA received no comments or objections to this application.

In September 1997, in response to a petition submitted by Auxein Corporation, EPA issued temporary tolerances for glutamic acid (62 FR 46882, September 5, 1997) (FRL–5741–3) and GABA (62 FR 46885, September 5, 1997) (FRL–5741–4) on crops including: snap beans, peanuts, cotton, potatoes, tomatoes, lettuce, green peppers, spinach, broccoli, cauliflower and cabbage to enhance crop yields. These tolerances were scheduled to expire on October 1, 1999. Again, EPA received no comments or objections to the exemptions from the requirement for a tolerance.

Later that same year, EPA published a proposed permanent exemption from the requirement of a tolerance to cover use of both active ingredients (62 FR 56168, October 29, 1997)(FRL–5751–3). Depending on the crop, the first application of AuxiGro was made at first bloom, first bud, at the 4 to 6 leaf stage, or other prescribed growth stage. A subsequent application, for a maximum of two applications, could be made 1 to 3 weeks later. The rate range is 0.10 – 0.75 pounds of formulated product/acre per treatment, not to exceed a maximum of 1.5 lb/A per growing season. This equated to the application of 0.55 lb/A glutamic acid and 0.4 lb/A of GABA applied at the maximum use rate. EPA received no comments or objections to this proposal. EPA finalized this rule the following year (63 FR 679, January 7, 1998)(FRL–5764–4).

On August 20, 1998, after the close of the objection period, Jack Samuels of the Truth in Labeling Campaign (TLC) wrote to EPA objecting to the approval of monosodium glutamate as a pesticide (Ref. 1). EPA responded to the letter on October 13, 1998 after Mr. Samuels' objections were reviewed (Ref. 2).

In September 1998, EPA made a technical amendment to the nomenclature language of the tolerance exemption to change ''glutamic acid' to ''LGA'' (63 FR 51302, September 25, 1998)(FRL–6029–1).

In 2000, Auxein petitioned EPA to modify 40 CFR 180.1187 and 40 CFR 180.1188 by deleting the wording ''when used as a plant growth enhancer'' from the tolerance exemption then in place and, as a result broaden the scope of the tolerance exemption, and to correct the language of the tolerance exemption then in place by changing the term ''raw agricultural commodities'' to ''food commodities'' (65 FR 76241–76244, Dec. 06, 2000). EPA received no comments on the petition.

Auxein submitted efficacy studies to support the broadened use patterns and EPA evaluated the data and determined that the new claims were supported by the data. As a result, in June 2001, EPA finalized the changes proposed by Auxein by modifying 40 CFR 180.1187 and 180.1188 accordingly (66 FR 33195, June 21, 2001)(FRL–6785–6).

On June 28, 2001, Dr. Adrienne Samuels of TLC submitted an Objection to the Exemption from the Requirement of a Tolerance and the group was joined individually by several of their members who also submitted objections.

IV. Response to Objections

A. Summary of Objections Received

There were 57 objectors to the revised tolerance exemption for LGA and GABA. All objections addressed the perception that an exemption for LGA was equivalent to treating crops with ''monosodium glutamate'' or ''processed free glutamic acid'' or ''processed free glutamic acid (MSG)'' or to ''what the Agency calls LGA.'' None of the objections specifically address ''LGA'' or provided scientific evidence or information linking dietary

consumption of LGA to adverse reactions. Similarly, none of the objections specifically cited consumption of GABA as the cause of adverse reactions or provided scientific evidence or information linking connection of dietary consumption of GABA to adverse reactions.

Rather, many objections reported the individual's reactions or someone else's reactions to dietary intake of MSG, and/or to processed free glutamic acid (MSG). These included, with frequency of reaction cited, headache/migraine (12), nausea (5), abdominal cramps (5), allergy (5), shortness of breath (4), and accelerated pulse rate (3). Other symptoms mentioned once or twice included numbness, lethargy, stiffness, distorted vision, coughing, insomnia, and facial twitching. Eight objections noted individuals felt that ingestion of ''small'' or ''tiny'' amounts of MSG elicited some reaction.

B. Agency Response to Summary Objections

As to the general objections on LGA, there is no evidence, and objectors provide no support for a claim, that dietary consumption of LGA causes adverse human health effects. This is the case regardless of whether the dietary consumption is of raw or processed food containing LGA or whether the LGA is produced environmentally by natural events or in the laboratory. In fact, because LGA is a defined chemical structure and a constituent of protein, there is significant exposure to LGA via the diet unrelated to the pesticide use and it is also synthesized endogenously (Ref. 3). Objectors provide no scientific evidence or information to distinguish natural LGA from what objectors refer to as ''processed'' LGA. This is because there is no difference in chemical structure, for example, between LGA found in nature or the human body and LGA produced for pesticide purposes. Where the chemical structure of two chemicals is the same in all contexts, there is no scientific basis to distinguish between the chemicals.

With respect to the symptoms cited by objectors, these symptoms are representative of the ''acute, temporary, and self-limited reactions'' to oral ingestion of MSG, as delineated by an Expert Panel to the Food and Drug Administration (FDA) evaluating the safety of use of MSG (Ref. 3). There has been a long history of inquiry into the safety of MSG as a flavor enhancer in foods. The Expert Panel to FDA concluded that ''...[b]ased on scientifically verifiable evidence, there is a subgroup of presumably healthy individuals within the population that responds generally within one hour of exposure with manifestations of the MSG Symptom Complex to an oral bolus of [greater than or equal to] 3 grams in the absence of food.'' However, the Expert Panel also concluded (emphasis theirs) that ''...no evidence exists to support a role of ingested glutamate in the etiology or exacerbation of...any...long-term or chronic illness.'' Moreover, there is no evidence that dietary consumption of LGA elicits, or has elicited, the ''MSG Symptom Complex'' of reactions. None of the objections identify foods containing LGA as the cause of the reactions cited.

C. Specific Objections and Agency Responses

1. *First objection*. TLC states that LGA naturally bound in protein or freed from protein via the natural human digestion process causes no adverse reactions (i.e., is safe). On the other hand, they state that foreign, unnatural substances are produced from protein containing glutamic acid stereoisomers (i.e., L-glutamic and D-glutamic acid) during natural fermentation, food preparation, and processing. Specifically mentioned are the production of D-glutamic acid and pyroglutamic acid when LGA is freed from protein via (microbial) fermentation, ''high heat (but not acid) hydrolysis,'' ''enzymolysis/autolysis,'' and ''secretion.'' In addition, they state carcinogenic propanols are produced from acid hydrolysis, and carcinogenic heterocyclic amines may be produced from heat but not acid. They state that LGA freed from protein via these mechanisms, and containing the above contaminants causes ''adverse reactions.'' They call these mixtures of chemicals ''processed free glutamic acid'' or ''processed free glutamic acid (MSG).'' No data were presented on the oral or dietary toxicity of any of the contaminants, nor on the doses required to produce toxicity, if any, to humans. Neither did they provide any evidence that the components of ''processed free glutamic acid'' can or do elicit reactions associated with ''MSG Symptom Complex,'' at any level of dietary exposure. Further, TLC states ''...we have never stated these so called contaminants are the cause of adverse reactions.''(Ref. 4)

EPA response. To the extent that objectors are concerned with contaminants that might be found in a pesticide product, EPA notes that its review of data/information submitted on the manufacturing process and on the chemical analyses of the technical grade of the active ingredient revealed none of the above mentioned contaminants. Thus, there is no scientific basis to support objectors' statements regarding the presence of the above mentioned contaminants and, to the extent that objectors' health-based statements are premised on the presence of these contaminants, there is no scientific basis to support objectors' statements. Had the contaminants been present in a pesticide product, a separate tolerance or exemption would typically be necessary to cover residues of such chemicals in or on food.

In addition, as noted above, an apparent primary basis for objections by TLC (both at the EPA and FDA) appears to be derived from their belief that the LGA which is derived from a (or any) manufacturing process is somehow (and in an unspecified manner) different than if it were freed from protein via a mechanism of human digestion, and is somehow different from LGA that humans and other higher organisms synthesize in their bodies, and is somehow different from the LGA that is found in unadulterated, unprocessed, unfermented food. Further, according to TLC, the LGA in lower forms of life (like bacteria) is in some unspecified manner, not equivalent to the LGA found in higher organisms. Again, as noted above, there is no scientific basis to support such an argument. The chemical structure of LGA is the same regardless of the organism in which it is found or regardless of how it is freed from protein. To claim that people may react adversely to the same chemical structure solely on the basis of how it is produced is not a sound scientific proposition.

Specifically, and as an example, when a hydrogen ion becomes disassociated from LGA, the compound is called L-glutamate. When a sodium ion becomes associated with L-glutamate the compound is called monosodium glutamate (MSG). When a potassium or ammonium ion becomes associated with L-glutamate the compounds are called respectively, monopotassium and monoammonium glutamate. When the monosodium, or monopotassium, or monoammonium salts of L-glutamate are dissolved in water the sodium, or potassium, or ammonium ions become disassociated from the glutamate molecule. Thus, ''...[G]lutamate entities from glutamic acid and glutamate entities from the three [ammonium, potassium, and sodium] salts are indistinguishable and, once added to food or water and eaten, glutamate from any source, whether naturally present in food or manufactured by bacteria, is metabolized in the same manner'' (Ref. 5). Likewise, upon release to the

environment (as in a pesticide product, for instance) glutamate entities from LGA or from the three salts would be metabolized in the same manner by organisms in the environment.

2. *Second objection*. In granting the tolerance exemption, the EPA has ''...violated Section 408(c)(2)(A)(i), Section 408(c)(2)(ii), Section (408)(c)(2)(b), and Section 408(b)(2)(D) of the Federal Food, Drug, and Cosmetic Act (FFDCA).''

EPA response. EPA does not agree with TLC that use of LGA or GABA as permitted by the registration and tolerance exemptions violates the specified sections of FFDCA in granting the tolerance exemption for LGA. TLC states that LGA bound in protein and freed via human digestion causes no ''adverse reactions.'' Since the chemical entity LGA is the same regardless of the source of protein or how it is freed from protein, it is the same as the ''truly natural glutamic acid'' referred to by TLC, and thus also would cause no adverse reactions. Further, none of the objectors registered any adverse reactions from dietary consumption of the chemical entity LGA as is normally found in foods. Finally, there is no evidence thus far submitted or thus far available to the Agency that dietary consumption of LGA has caused or will cause adverse effects in the U.S. population, and its subgroups. If such data/information became available, the Agency would then reassess its position with respect to the tolerance exemption for LGA (and also for GABA).

In establishing the tolerance exemption for LGA, the Agency has considered the validity, completeness, and reliability of the extensive scientific data base on LGA, including in its monosodium form (MSG), and concluded that based on that data there is reasonable certainty of no harm resulting from all anticipated dietary exposures to LGA. The Agency considered information on the dietary consumption patterns of humans, as well as the sensitivities of major identifiable subgroups of consumers, including infants and children.

In addition, the strength and weakness of the existing data base, which includes the reports and conclusions of authors cited by TLC, previously has been reviewed and summarized in detail by the 1995 Expert Panel (Ref. 3). The Agency agrees with the conclusions of the subsequently issued summary report of Dr. Donald S. Stevenson (Ref. 6) that there is no scientific basis to support any argument that LGA, or glutamate, or MSG, plays any role in allergenicity including urticaria or anaphylaxis. ''It is illogical to propose that the human immune systems would form antibodies against our own amino acids....All amino acids are too small to be an antigen (allergen)'' (Ref. 6). EPA also agrees with the subsequent report conclusion of Dr. David G. Hattan (Ref. 7) that based on the scientific data ''...we do not concur with the Expert Panel that asthma is a predisposing medical condition associated with the ingestion of MSG.'' Finally, EPA agrees with the conclusions of the subsequently issued summary report of Dr. Roland N. Auer (Ref. 8) that ''[n]o causal relationship has been established between...diseases and oral MSG [or glutamate] ingestion in humans...'' There also is no evidence that ''...retinal diseases are caused, related to or accelerated by MSG [glutamate].''

3. *Third objection*. ''The processed free glutamic acid (referred to in the 1998 Final Rule as LGA) that was granted an exemption from the requirement of a tolerance, is a neurotoxic endocrine disruptor that causes brain lesions [and] endocrine disorders'' which are manifested as growth disorders, learning/behavior/memory deficits, MSG-associated responses, schizophrenia, multiple sclerosis (MS), Parkinson's disease, amyotrophic lateral sclerosis (ALS), etc.

EPA response. The Agency does not agree with the objection that LGA is a neurotoxic endocrine disruptor, and when consumed in the diet will lead to the stated disorders and associated diseases, and to the MSG symptom complex of reactions. As concluded by the Expert Panel to FDA, ''...no evidence exists to support a role of ingested glutamate in the etiology or exacerbation of...any...long-term or chronic illnesses...'' including diseases such as Alzheimer's disease, Huntington's chorea, and amyotrophic lateral sclerosis (Ref. 3).

The Agency is aware of the studies in which LGA, when delivered at high doses to laboratory animals (mice, rats, infant primates) by appropriate route (injection, high-volume force feeding) induces neuronal death-associated lesions at the hypothalamus (and, in rodents, the medulla oblongata). The Agency also is aware of concerns presented by some (Ref. 9) that such findings, if extrapolatable to dietary intake of LGA by humans could have health implications. Such speculations, however, are not supported since there is no scientific evidence to indicate that LGA or MSG as consumed in foods disrupts the neuroendocrine axis. No such glutamate-induced lesions of the hypothalamus or medulla oblongata ever have been seen or described in humans upon autopsy of millions of people - including children - over the years. (Ref. 8). ''Claims that orally ingested MSG [or glutamate] causes or contributes to Alzheimer's disease, Parkinsonism, Huntington's Chorea, amyotrophic lateral sclerosis, obesity, early or late puberty, stunting of growth, or infertility must be viewed with extreme skepticism until some evidence is provided.'' (Ref. 8).

4. *Other specific objection issues raised by TLC.*—a. TLC knows of ''...no white, practically free-flowing crystalline powder that is ubiquitous in nature.''

Agency response. When organic materials, like amino acids,are purified from nature they take on the physical and chemical characteristics of the purified molecule. Upon release of this purified material to the environment, as a pesticide active ingredient for example, it will dissolve in water and will be indistinguishable from the LGA already in the environment.

b. TLC states that EPA ''...falsely asserted that processed free glutamic acid has a long history of food uses''.

Agency response. EPA never has used the term ''processed free glutamic acid.'' This term is used by TLC, and is not used by members of the scientific community. The terms ''LGA'' and ''monosodium glutamate'' define the chemical structures of specific organic molecules and are recognized terms.

c. TLC cites three publications by J. W. Olney to support their conclusion that ''...there is growing recognition that the reactive component of monosodium glutamate is processed free glutamic acid...that causes adverse reactions...regardless of the names of the ingredients that contain it or the uses to which it is put.''

Agency response. The scientific research results of J. W. Olney (e.g., Ref. 10) showing neuronal lesions in certain laboratory animals have been considered by EPA in its finding of safety from dietary exposure in humans to LGA. EPA believes Olney's research conclusions are based on effects due to the recognized molecules ''monosodium glutamate'' or ''LGA'' regardless of the source (e.g., natural or manufactured) and when delivered in highly purified form and at extreme dose levels.

d. TLC cites a report by Martinez (Ref. 11) and concludes that the author ''...found a relationship between glutamate levels in the CSF [cerebrospinal fluid] of the central nervous system, not glutamate levels in the plasma, that were related to migraine headache.''

Agency response. Martinez (Ref. 11) found that glutamic acid levels in CSF

[obtained by lumbar puncture during migraine attack] were lower than in CSF of a ''stress'' control population (e.g., pre-operative surgery patients, acute stroke sufferers, cancer patient, multiple sclerosis sufferers). He also found that glutamic acid levels in plasma of migraine sufferers during attack were lower than in plasma of the ''stress'' control population. No conclusions on relationships between oral consumption of MSG and migraine can be drawn from the results, since the study was not designed to, or intended to, test such a relationship. The study results are best discussed with regard to possible physiological responses (e.g., glutamate release) to brain events (e.g., cortical blood flow, hypoxic ischemia) that occur during migraine.

e. TLC states ''(i)ngestion of processed free glutamic acid causes adverse reactions in susceptible individuals - reactions known to occur as side effects of neurotropic drugs such as valium.''

Agency response. The benzodiazepiene drug Valium (diazepam) is used to treat anxiety disorders, for skeletal muscle relaxation, and as a preoperative anesthetic. It interacts with part of the GABA receptor, in the presence of GABA to enhance GABA-induced changes in membrane potential, thereby augmenting inhibitory effects by stimulating various GABA-ergic pathways. Primary side effects are drowsiness and loss of balance. Thus Valium acts in concert with the neuroinhibitory physiological role of GABA, in apposition to the neuroexcitatory physiological role of L-glutamate.

f. EPA omitted data from the literature on toxic and endocrine-disrupting properties of processed free glutamic acid and its ability to cause adverse effects in humans.

Agency response. TLC did not cite any studies done in humans that show adverse endocrine, neurological, learning, or locomotor effects from exposure to LGA, MSG, or to what TLC refers to as ''processed free glutamic acid.'' EPA believes it has considered all of the scientific literature.

g. TLC states that certain human studies done with placebos induced reactions in control groups and thereby obscured the results of such studies when the control population was compared to the treated group. TLC cites a study by Strong (Ref. 12) who concluded that placebo materials (e.g., capsules) in some earlier human studies may give headaches to ''dietary migraine sufferers.''

Agency response. Strong (Ref. 12) summarized results from six earlier published double-blind studies conducted to test patient sensitivity to tyramine and beta-phenylethylamine. His analysis of the results showed 18% of patients reported headaches from placebos which were concealed in gelatin capsules. In the current study by Strong (Ref. 12), the author was the sole subject in the study. The double-blind component of the study apparently was done with water containing 1 milligram/milliliter (mg/ml) tyramine or with some unspecified amount of unspecified placebo in 20 ml of water. Gelatin capsules were not used. The author suffered headache after consuming 5 of 6 of the tyramine samples, but not from placebo samples. The author self-reported headache from consuming 400 mg of MSG in 15 grams (g) of cottage cheese, from 118 mg partially hydrolyzed vegetable protein in 15 g of ricotta cheese, and 123 g gelatin capsule in potato chips. This part of the study apparently was not double-blinded. The Agency believes the results from an extensive study done by Geha et al. (Ref. 13) represent the best available data in a multicenter, multiphase, double-blind, placebo-controlled study with MSG using 130 self-reporting responders to MSG in the initial phase of the study. A citrus-based placebo beverage was used. The results suggested that ''...large doses of MSG given without food may elicit more symptoms than a placebo in individuals who believe they react adversely to MSG. However, neither persistent nor serious effects from MSG ingestion are observed, and the responses were not consistent upon retesting.''

h. TLC states ''[t]here is no evidence that surface residue from processed free glutamic acid will be gone prior to harvesting crops...and the applicant failed to note there would be residue in and on food crops.'' ''To be effective as a plant growth enhancer...processed free glutamic acid would have to be taken up by the plants.'' Also, all food crops ''[c]ould potentially be treated with processed free glutamic acid.''

Agency response. The tolerance exemption for LGA is supported by a lack of dietary toxicity. Therefore, it is appropriate for the EPA to not require residue data for the pesticidal use of LGA.

i. TLC states they have demonstrated that the glutamic acid in monosodium glutamate or other processed foods is not chemically identical to the LGA found in unadulterated/unprocessed/unfermented food. The glutamate industry has ''failed to distinguish between free glutamic and processed free glutamic acid...and only processed free glutamic acid causes adverse reactions in MSG-sensitive people who ingest amounts that exceed their tolerance levels.''

Agency response. TLC has not demonstrated that the chemical entity LGA is somehow different when it is manufactured. The chemical structure of LGA is the same no matter how it is produced, or from the source from which it is derived.

j. ''...EPA had the audacity to state in 1988 that '[t]he Agency has no information to suggest that glutamic acid will adversely affect the immune or endocrine systems'...and in 2001...EPA had the gall to ignore the subject of endocrine disruptors entirely.''

Agency response. There is no evidence that dietary consumption of LGA or monosodium glutamate causes adverse effects to the immune or endocrine systems of humans including infants and children.

k. TLC states that ''...monosodium glutamate and LGA are given hazard ratings of HR3 (most toxic) indicating an LD_{50} below 400 milligrams/kilogram (mg/kg)...in the sixth edition of 'Dangerous Properties of Industrial Materials.'''

Agency response. The oral LD_{50} values for LGA are reported by the Registry of Toxic Effects of Chemical Substances (RTECS) as >30 g/kg in the rat and 2.3 g/kg in the rabbit. The oral LD_{50} values for MSG are reported at 16.6 g/kg in the rat and 11.4 g/kg in the mouse. These values are consistent with the least toxic category for pesticides, and would not require any precautionary statements for human hazard on the pesticide label. More relevant, is the long history of human dietary exposure to the naturally occurring amino acid, LGA, with no adverse effects - including lethality - ever being attributed, linked, or even expected from such exposures.

l. TLC believes that EPA waived a requirement for a metabolism study with LGA because MSG has GRAS status.

Agency response. A laboratory animal metabolism study (i.e., OPPTS Harmonized Guideline No. 870.7485) is not an EPA requirement for registration of biochemical pesticides (LGA and GABA are classified as biochemical pesticides). Thus, there is no need to waive a requirement for a metabolism study. Yet, the EPA could require such a study for biochemical pesticides if considered warranted. However, such a study in laboratory animals is not warranted because there is extensive knowledge on dietary exposure to, and subsequent metabolism of, LGA in humans without findings of toxicity. Likewise, the GRAS status of MSG

supports, and is consistent with, the Agency's finding for a tolerance exemption for LGA.

m. TLC cites a multigeneration reproduction study (Ref. 14) where mice were fed MSG to support their contention that ''...failure to find differences in growth or adverse reactions of control and experimental groups may very well have been, in part, to the fact that control groups were receiving neurotoxic substances in their basal diets.'' The cited potential component of the basal diet was ''yeast food'' which TLC states ''...invariably contained either protease (which creates processed free glutamic acid during manufacture) or L-cysteine which produces neurotoxic effects...more extensive than the effects of processed free glutamic acid.''

Agency response. In the above cited study, about 800 mice through the F0 to F3 generations were fed basal diet containing 1% MSG, and an additional 800 mice were fed basal diet containing 4% MSG. There were about 1800 mice in the control group, fed basal diet only. There were no observed adverse effects in animals from the control or treated groups. All parameters measured in the control and treated groups were within expected ranges for the mouse. No brain lesions or any other pathological changes were noted. Fertility index, gestation index, viability index, and lactation index were all high, in the MSG-treated animal and control groups. The hypothesis of TLC that neurotoxic components in the basal diet adversely affected the control group animals, and thus masked effects in the dosed group animals when the groups were compared is not supportable when no adverse effects were seen in any group, and all parameters were within expected ranges typical of the normal healthy mouse.

n. TLC states certain animal feeding studies submitted to the Agency were flawed because while they ''...accounted for the amount of food consumed by experimental and control groups [they] did not account for the amount of processed free glutamic acid consumed as opposed to being left on the table.'' ''Every animal owner knows that animals are quite adept at ferreting out and rejecting (not eating) pills or other goodies hidden in their food.''

Agency response. In dietary studies with rodents, test materials are uniformly blended with, and thus uniformly distributed in the food. Therefore, rejection of the diet due to aversion to the test material mixed in the food would be readily determined by a measured decrease in food consumption. Food consumption was accounted for in experimental and control groups in the studies cited, and was comparable among the groups.

o. TLC states that the results from acute toxicity studies done with laboratory animals do not ''...mimic the real life situation wherein animals could be sprayed or otherwise come in contact with Auxigro.

Agency response. The acute toxicity battery of studies were done at doses sufficiently high to allow placement of the test material in the least toxic category for pesticides. Considering the acute inhalation toxicity study as an example, rats were exposed in a chamber to 2.58 mg/L for 4 hours. The only effects observed were piloerection, decreased activity, and red crust around the nose. These minor effects resolved by day 4 after exposure. Also, a very high dose of Auxigro (i.e., 5 g/kg) only caused slight and reversible redness to the animals' skin, and the minor eye irritation effects observed also were reversible. It can be concluded that if animals were sprayed with Auxigro during pesticide application and use, they would not be adversely affected.

p. Agency summary response to objections by TLC on the tolerance exemption for LGA. TLC has not provided any scientific documentation that dietary consumption of LGA has caused harm, or will cause harm to humans, including to infants and children. They have not provided any evidence that LGA is allergenic, or when consumed by humans, adversely affects the endocrine system or the central and peripheral nervous system. They have provided no evidence that LGA is carcinogenic. They have not provided any scientific documentation that an oral bolus of MSG causes any adverse effects in humans beyond those typically associated with the MSG Symptom Complex. Even then, the pesticidal use of LGA represents an exposure scenario quite different than the food additive use of MSG as a flavor enhancer. Use of LGA as a pesticide is unlikely to contribute any significant addition of free glutamic acid already in the human diet, and even if use of LGA as a pesticide did significantly increase free glutamic acid in the diet there are no toxic endpoints that have been identified from dietary consumption of LGA. TLC has maintained that LGA is somehow different than the form found in nature when it is produced by microorganisms, or when it is released from protein by other than human digestive proteolytic enzymes. TLC calls this different material ''processed free glutamic acid'' and maintain that this is the material which causes numerous adverse effects. It mentions certain contaminants that may arise from certain processes that are used, or have been used, in deriving commercially available sources of LGA, but never states that it believes these contaminants are causing adverse effects, or provide any data on dose-response studies to support adverse effects from these materials. In fact, it has ''...never stated these so called contaminants are the cause of adverse reactions.'' Nevertheless, the tolerance exemption set forth under 40 CFR 180.1187 is for LGA, and is not for any other chemical.

D. Summary of Objections by Lucinda Larsen

One objector, Lucinda Larsen, objected to the tolerance exemption for LGA and GABA on the ground that it would allow use of unrestricted amounts of ''potent neurotoxins'' which would interfere with ''...almost all bodily functions.'' If supplemented in the diet, millions of consumers would suffer death or injury from ingestion of the slightest amount of ''processed free glutamic acid'' or ''manufactured free glutamic acid.'' ''The glutamic acid found in nature is bound not freed and [is un]able to interfere with bodily functions.'' The objector believes the EPA has not considered and ''...collect[ed] updated pertinent data from unbiased sources.''

Agency response. The Agency has considered the strength and weakness of the existing scientific data base (e.g., see above) and has concluded that the tolerance exemptions for LGA and for GABA pose no unreasonable risk to human health. Free LGA is found in nature, in human bodies, and in the foods humans eat and it is the same glutamic acid as manufactured from microbial fermentation or by release from proteins. Likewise, free GABA, derived via enzymatic activity (i.e., decarboxylation reaction) from LGA, also is found in humans, plants, and microorganisms. LGA is the most important excitatory neurotransmitter in the central nervous system (CNS). GABA on the other hand is not an excitatory neurotransmitter, but rather is an important inhibitory neurotransmitter.

V. Order Responding to Objections

The exemptions for the requirement of a tolerance for LGA and GABA on all food commodities to which TLC and other objectors filed objections are in force and will remain so.

As detailed in Dr. Andersen's October 13, 1998 response to Mr. Jack Samuels and TLC's first objection to the exemption for LGA in August 1998, EPA

scientists critically appraised all the data at that time and came to the conclusion that Mr. Samuels' objection was unwarranted (Ref. 2). However, EPA wishes to make sure all possible areas of disagreement are covered and has reviewed the latest information submitted by the objectors and believes nothing substantive has been added to the body of data known on these chemicals, and no change in the previous exemption is necessary.

VI. Regulatory Assessment Requirements

As indicated previously, this action announces the Agency's final decision regarding an objection filed under section 408 of FFDCA. As such, this action is an adjudication and not a rule. The regulatory assessment requirements imposed on rulemakings do not, therefore, apply to this action.

VII. 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, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

VIII. References

1. Letter from Jack L. Samuels to Sue Smith, The White House, Aug. 20, 1998.

2. Letter from J. Andersen to J. Samuels, Oct. 13, 1998.

3. Raiten, D.J. et al., Analysis of Adverse Reactions to Monosodium Glutamate (MSG), American Institute of Nutrition, MD, 1995.

4. e-Mail from J. Samuels to J. Andersen, 7/28/98.

5. Kuznesof, P.M., Expert Report, undated.

6. Stevenson, D.S. Expert Report, undated.

7. Hattan, D.G. Expert Report, undated.

8. Auer, R.N., Expert Report, undated.

9. Olney, J. W. Excitotoxins in Foods. Neurotoxicology 15(3) 535–544, 1994.

10. Olney, J.W., et al., Cytotoxic effects of acidic and sulphur containing amino acids on the infant mouse central nervous system. Exp. Brain Res. 14:61–76, 1971.

11. Martinez, F., et al. Neuroexcitatory amino acid levels in plasma and cerebrospinal fluid during migraine attacks. Cephalalgia. 13:89–93, 1993.

12. Strong, F.C., Why do some dietary migraine patients claim they get headaches from placebos? Clin. Experimental Allergy. 30:739–743, 2000.

13. Geha R. S. et al., Multicenter, double-blind, placebo-controlled, multiple challenge evaluation of reported reactions to monosodium glutamate. J. Allergy Clin. Immunol. 106:973–980, 2000.

14. Anantharaman, K., *In utero* and dietary administration of monosodium L-glutamate to mice: reproductive performance and development in a multigeneration study. *In* ''Glutamic Acid: Advances in Biochemistry.'' L. J. Filer, et al., eds. Raven Press, N.Y., 1979.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative procedure, pesticides and pests.

Dated: October 18, 2004.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 04–24041 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0331; FRL–7683–5]

Deltamethrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of deltamethrin, isomers trans-deltamethrin and α-R-deltamethrin in or on almond hulls; apples, wet pomace; artichoke, globe; barley, bran; cattle, fat; cattle, meat; cattle, meat byproducts; corn, field, forage; corn, field, refined oil; corn, field, stover; corn, pop, stover; corn, sweet, forage; corn, sweet, kernel + cob with husks removed; corn, sweet, stover; egg; fruit, pome, group 11; goat, fat; goat, meat; goat, meat byproducts; grain, aspirated fractions; grain, cereal, group 15, except sweet corn; hog, fat; horse, fat; horse, meat; horse, meat byproducts; lychee (import tolerance); milk, fat (reflecting 0.02 ppm in whole milk); nut, tree, group 14; onion, dry bulb; onion, green; poultry, fat; poultry, meat; poultry, meat byproducts; radish tops; rapeseed; rice, hulls; rye, bran; sheep, fat; sheep, meat; sheep, meat byproducts; sorghum, grain forage; sorghum, grain stover; soybean, seed; soybean, hulls; starfruit (import tolerance); sunflower seeds; vegetable, cucurbit, group 9; vegetable, fruiting, group 8; vegetable, root, except sugar beet, subgroup IB; vegetable, tuberous and corm, subgroup; IC; wheat, bran. Bayer Crop Science LP, formerly Aventis CropScience, 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 October 27, 2004. Objections and requests for hearings must be received on or before December 27, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP –2004–0331. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 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: George LaRocca, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–6100; e-mail address: *larocca.george@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 November 7, 2001 (66 FR 56298) (FRL–6808–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E6232) (PP 0F6080) by Bayer Crop Science LP, formerly Aventis CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.435 be amended by establishing a tolerance for residues of the insecticide deltamethrin, in or on almond hulls; apples, wet pomace; artichokes; brassica, head and stem crop subgroup 5A, excluding cabbage; bulb vegetables ; cabbage (w/wrapper leaves); cabbage (w/o wrapper leaves); carambola (star fruit); corn, field grain; corn, forage (field); corn, fodder/stover (field); corn, refined oil; corn, flour; corn, meal; corn, milled by products; cucurbit vegetables; eggs; fruiting vegetables; leafy vegetables; lichi fruit; milk, fat (reflecting 0.02 ppm in whole milk); mustard greens; pome fruit; poultry, fat; poultry, mbyp; poultry, meat; prunes; rapeseed (including canola and crambe); root vegetable, except sugarbeet (subgroup 1B): roots; ruminant fat; ruminant mbyp; ruminant meat; sorghum, forage; sorghum, fodder/stover; sorghum, grain; soybeans; stone fruit; sunflower seeds; tree nuts; tuberous and corm vegetables subgroup 1C, excluding artichokes; wheat gluten (post harvest); wheat, grain (post harvest); wheat, grain dust (post harvest) at 1.2, 1.2, 0.5, 0.50, 1.5, 1.5, 0.15, 0.2, 0.06, 0.7, 7.0, 0.6, 0.18, 0.12, 0.18, 0.06, 0.02, 0.25, 4.5, 0.2, 0.1, 4.5, 0.2, 0.05, 0.02, 0.02, 2.4, 0.12, 0.15, 0.04, 0.02, 0.02, 0.5, 2.0, 0.5, 0.05, 0.6, 0.05, 4.0, 0.1, 0.04, 1.4, 2.0, and 2.7 parts per million (ppm) respectively . The registrant originally filed petition PP 1E6232 with the Agency, proposing the establishment of regulations for residues of deltamethrin, an insecticide, in or on various food commodities. The petition (PP 1E6232) requested the establishment of proposed tolerances for deltamethrin in/on almond hull, three crop subgroups and rapeseed, and import tolerances for two tropical fruits, as petitioned through the Minor Crop Pest Management program (IR-4). Petition (PP 1E6232) was superceded, at the request of the registrant, by petition (PP 0F6080), including additional tolerances for the above listed crops, and the proposed commodities described in the previous petition (PP 1E6232). The Notice of Filing of November 7, 2001 (66 FR 56298) (FRL–6808–5) identified an inclusive summary of both petitions prepared by Bayer Crop Science LP formerly Aventis CropScience, the registrant. There were no comments received in response to the notice of filing.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of deltamethrin, isomers trans-deltamethrin and α-R-deltamethrin in or on the commodities listed in Unit II. 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 deltamethrin is discussed in Tables 1 and 2 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	NOAEL = 1.0 and 10 milligrams/kilogram/day (mg/kg/day) for males and females respectively LOAEL = 2.5 mg/kg/day for males based on decreased body weight for males, females was not established.
870.3150	90-Day oral toxicity—non-rodents	NOAEL = 1.0 mg/kg/day males and females LOAEL = 2.5 mg/kg/day based on central nervous system effects diarrhea, vomiting and decreased body weight gain for males and females.
870.3200	21/28-Day dermal toxicity rat	NOAEL > 1,000 mg/kg/day for males and females (limit dose) Dermal NOAEL was not established. Signs of local irritation seen at all doses.
870.3250	90-Day dermal toxicity	NA
870.3465	21-Day inhalation toxicity rat	NOAEL = 3.0 mg/kg/day males and females. LOAEL = 9.6 mg/kg/day based on decreased weight gain, nervous system stimulation and skin irritation for males and females
870.3700	Prenatal developmental—rodents	Maternal NOAEL = 3.3 mg/kg/day Maternal LOAEL = 7.0 mg/kg/day based on decreased body weights and body weight gains and clinical signs of toxicity Developmental NOAEL = greater than 11.0 mg/kg/day Developmental LOAEL = none observed
870.3700	Prenatal developmental—mouse	Maternal NOAEL ≥ 10 mg/kg/day Maternal LOAEL = not observed Developmental NOAEL = 0.1 mg/kg/day Developmental LOAEL = 1.0 mg/kg/day based on decreased fetal weight, and delayed ossification of the sternebrae and paws
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 5.4 and 6.1 mg/kg/day for males and females respectively. Parental/Systemic LOAEL = 21.2 and 23.5 mg/kg/day for males and females respectively. Based on increased mortality and clinical signs, decreased body weights, body weight gains, and absolute food consumption, and gross pathological findings in both sexes. Reproductive NOAEL = 21.2 mg/kg/day for males and females. Reproductive LOAEL = [not established] Offspring NOAEL = 5.8 and 6.7 mg/kg/day for males and females respectively. Offspring LOAEL = 24.9 and 27.2 mg/kg/day for males and females respectiveley. Based on increased mortality and clinical signs, decreased body weights, body weight gains, and absolute food consumption, and gross pathological findings in both sexes.
870.4100	Chronic toxicity—rodents	Same as Chronic Toxicity/Carcinogenicity-rat see below (870.4300)
870.4100	Chronic toxicity—dogs	NOAEL = 1.0 mg/kg/day males and females. LOAEL = 10.0 mg/kg/day males and females. Based on reduced body weight gain, chewing and scratching of extremities, and liquid feces.
870.4200	Carcinogenicity—rats	No evidence of carcinogenicity Same as chronic toxicity/carcinogenicity-rat see below (870.4300).
870.4300	Carcinogenicity—mice	NOAEL = 2,000 mg/kg/day (HDT) LOAEL = not established No evidence of carcinogenicity, HDT assumed to be adequate to characterize the carcinogenic potential based on a 12-week toxicity study in mice showing death and body weight differences (13% decrease) at 3,000 ppm.
870.4300	Chronic/Carcinogenicity-rat	NOAEL = >50 ppm (HDT) for males and females. LOAEL was not determined No evidence of carcinogenicity
870.5100	Bacterial reverse mutation test-*S. typhimurium*	There was no evidence of an induced mutagenic effect up to cytotoxic concentrations ≥38 micro grams/mL -S9; 150 μg/mL +S9). Levels ≥75 micrograms/mL were insoluble.

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

Guideline No.	Study Type	Results
870.5375	*In vitro* mammalian chromosome aberration test- Chinese hamster ovary (CHO) cells	There was no evidence of an induced mutagenic effect up to cytotoxic concentrations (≥38 micrograms/mL -S9; 150 micrograms/mL +S9). Levels ≥75 micrograms/mL were insoluble.
870.5550	Other Genotoxicity Bacterial DNA damage/repair-*E. coli*	There was no evidence of DNA repair/damage up to the limit dose ((5,000 micrograms/well +/-S9). Compound precipitation seen at ≥200 micrograms/well.
870.5550	Other Genotoxicity Unscheduled DNA synthesis in primary rat hepatocytes	There was no evidence that unscheduled DNA synthesis was induced up to insoluble concentrations (≥130 micrograms/mL).
870.6200	Acute neurotoxicity screening battery rats	NOAEL = 5 mg/kg/day LOAEL = 15 mg/kg/day based on salivation, soiled fur, impaired motility, no reaction to approach or touch response in the functional observation battery (FOB)
870.6200	Subchronic neurotoxicity screening battery	NOAEL = 14 and 16 mg/kg/day for males and females respectively. LOAEL = 54 and 58 mg/kg/day for males and females respectivley.. Based on mortality, clinical signs, FOB findings, and decreased body weights, body weight gains, and food consumption.
870.6300	Developmental neurotoxicity	NA
870.7485	Metabolism and pharmacokinetics - rats	The test material was relatively well absorbed. Excretion was almost complete within 48 hours. Approximately 36-59% of the dose was found in feces and an approximately equal amount in urine. Absorbed deltamethrin was cleaved by hydrolysis at the ester site followed by rapid sulfate and glucuronide conjugation.
870.7600	Dermal penetration	NA
	Special studies	There were no special studies

TABLE 2.—NON-GUIDELINE TOXICITY STUDIES AND LITERATURE.

Study Type	Results	Citation
Acute Motor Function Oral-male rat	Vehicle: Corn oil ED50 5.1 mg/kg LOAEL 3.0 mg/kg (based on reduced motor function) NOAEL 1.0 mg/kg Vehicle: Methylcellulose ED50 >1,000 mg/kg LOAEL 300 mg/kg (based on reduced motor function) NOAEL 100 mg/kg	Crofton *et al.*, (1995)
Acute Motor Function Oral-male rat	Vehicle: Corn oil LOAEL 2.0 mg/kg (based on reduced motor function) NOAEL Not established	Crofton and Reiter, (1984)
Acute Locomotor Activity Oral- male rat	Vehicle: Corn oil LOAEL 3.0 mg/kg (based on reduced locomotor activity) NOAEL 1.0 mg/kg	Gilbert *et al.*, (1990)
Acute Acoustic Startle Response (ASR) Oral-rats	Vehicle: Corn oil 21-day old rats: LOAEL 1 mg/kg NOAEL Not established Adults: LOAEL 2 mg/kg NOAEL Not established At the ED50 (4 mg/kg), the brain concentration of deltamethrin was ≈2-fold higher in weanlings than in adults	Sheets et al., (1994)

TABLE 2.—NON-GUIDELINE TOXICITY STUDIES AND LITERATURE.—Continued

Study Type	Results	Citation
Acute Behavioral Tests Oral - Mice	Vehicle: 20% Fat Emulsion at 0.7 mg/kg (only dose tested) 17- day old mice No significant changes 4-month old mice Significant changes in locomotion, rearing and activity and a significant decrease in 3HQNB binding sites in the cerebral cortex.	Eriksson and Fredriksson, (1991)
Prenatal developmental—rodents	Maternal NOAEL = 1.0 mg/kg/day Maternal LOAEL = 7.0 mg/kg/day based on slightly reduced body weights Developmental NOAEL = 1.0 mg/kg/day Developmental LOAEL = 10 mg/kg/day based on delayed ossification of the sternebrae	Non-guideline
Prenatal developmental—nonrodents	Maternal NOAEL = 100 mg/kg/day Maternal LOAEL = not established Developmental NOAEL = 25 mg/kg/day Developmental LOAEL = 100 mg/kg/day based on increases in the incidences of delayed ossification and skeletal variations	Non-guideline
Prenatal developmental—nonrodents	Maternal NOAEL = 10 mg/kg/day Maternal LOAEL = 32 mg/kg/day based on decreased bodyweight gain between GD 6 and 21. Developmental NOAEL = >32 mg/kg/day Developmental LOAEL = not established	Non-guideline

B. Toxicological Endpoints

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

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

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

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

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

A summary of the toxicological endpoints for deltamethrin used for human risk assessment is shown in Table 3 of this unit:

TABLE 3.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DELTAMETHRIN 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 (General Population and Females 13-49 years of age)	NOAEL = 1.0 mg/kg/day UF = 100 Acute RfD = 0.01 mg/kg/day	Special FQPA SF = 3X aPAD = acute RfD/ Special FQPA SF = 0.0033 mg/kg/day	Neurotoxicity-Motor Activity (Crofton *et al.*, 1995) LOAEL = 3.0 mg/kg/day based on reduced motor activity
Chronic Dietary (All populations)	NOAEL= 1.0 mg/kg/day UF = 100 Chronic RfD = 0.01 mg/kg/day	Special FQPA SF = 3X cPAD = chronic RfD/Special FQPA SF = 0.0033 mg/kg/day	Chronic Dog Study LOAEL = 10 mg/kg/day based on clinical signs and reduced body weight gain
Incidental Oral Short and Intermediate Term	NOAEL = 1.0 mg/kg/day UF = 100	LOC for MOE = 300	Same as chronic dietary
Dermal All Durations			Not required: No systemic toxicity via the dermal route was seen at the limit dose; there was no evidence of cumulative toxicity; and physical and dermal properties indicate low dermal absorption.
Inhalation All Durations (Residential)	NOAEL = 1.0 mg/kg/day UF = 100= 100%)	LOC for MOE = 300 (Residential)	Same as chronic dietary.
Cancer (oral, dermal, inhalation)			Classification: Not likely to be a human carcinogen.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.435) for the combined residues of deltamethrin, isomers trans-deltamethrin and α-R-deltamethrin, in or on a variety of raw agricultural commodities, including additional meat, milk, poultry and egg tolerances. Risk assessments were conducted by EPA to assess dietary exposures from combined residues of deltamethrin, isomers trans-deltamethrin and α-R-deltamethrin, and tralomethrin in food as follows:

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

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 USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute dietary exposure analysis was a refined probabilistic one. The analysis was refined through the use of projected market share estimates from Agency analysis and anticipated residues (ARs) based on field trial values. At the 99.9th percentile of exposure, the risk estimate for the general U.S. population is 39% of the acute population adjusted dose (aPAD). The most highly exposed population subgroup is All Infants, which utilizes 65% of the aPAD.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Chronic exposure analysis was refined through the use of projected market share estimates from Agency analysis and the anticipated residues (ARs) are based on field trial values. The U.S. population and all population subgroups have exposure and risk estimates that are below the Agency's level of concern. The general U.S. population utilizes 3.0% of the chronic PAD (cPAD). The most highly exposed subgroup, Children 1-2 years, utilizes 7.6% of the cPAD.

iii. *Cancer.* Deltamethrin is classified by the Agency as not likely to be carcinogenic in humans.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to

show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of %CT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on %CT.

The Agency used PCT information as follows:

For existing uses of deltamethrin and tralomethrin, the Agency used estimates of PCT for the acute and chronic exposure assessments which were determined using Doanes Market Survey Data (1996–2001). The following deltamethrin PCT data estimates were used for both the acute and chronic dietary exposure assessments: Cotton (14), tomato (19). The following tralomethrin PCT data estimates were used for both the acute and chronic dietary exposure assessments: Broccoli (6.0), lettuce, head (15), lettuce, leaf (22), and soybean (1.0). Tralomethrin is also registered for use on cotton and sunflower. For cotton, the deltamethrin PCT value is higher; therefore, the deltamethrin value was used in the assessment. There is a proposed use for deltamethrin on sunflower, and the projected market share value is higher than the PCT value for tralomethrin. As a result, the projected market share value for deltamethrin was used in the assessment. Since deltamethrin and tralomethrin are essentially the same chemical, it was assumed that both pesticides would not be used on the same crop.

The Agency believes that the three conditions listed in Unit III.C.1.iv. have been met. With respect to Condition 1, PCT estimates are derived from market survey data, which are reliable and have a valid basis.

The Agency used maximum PCT for both acute and chronic dietary exposure estimates. A maximum PCT is unlikely to underestimate exposure to an individual because of the fact that an individual is unlikely to be exposed to more than the maximum PCT either on an acute basis or over a lifetime. For acute assessments, the Agency incorporates PCT information by creating a residue distribution file which includes the measured residue values from field trials, and zero residue values added to account for the percent of crop not treated. This approach is used only for non-blended or partially blended commodities as defined under EPA SOP99.6. For blended commodities, a single-point estimate is created from the residue value multiplied by the upper bound PCT. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation.

For the new uses, the Agency used PCT estimates for both the acute and chronic exposure assessments based on market share projections as follows: Almond (28 %); apple (38 %); canola (1.0 %); cantaloupe (11 %); carrot (22 %); corn (5.0 %); cucumber (10 %); garlic (1.0 %); onion (2.0 %); pear (23 %); pepper (12 %); potato (7.0 %); soybean (1.0 %); squash (2.0 %); sunflower (9.0 %); and walnut (5.0%). The following methods were used to estimate market share for the new uses: The Agency reviewed the proposed new uses for deltamethrin, identified practicable alternatives based on the primary target pest for each use site, and estimated a likely upper-bound for the percent crop treated. The Agency has determined that the alternatives are viable based on the best available EPA data, and assumes they will control the insect pests identified on the proposed label. The Agency believes that the projected market share estimates are upper-bound estimates because it summed the current market share of all chemicals that are currently being used to control the target pest on a particular crop. By doing so, the Agency has made the assumption that deltamethrin will replace all other insecticides that are currently being used on that crop to control the primary target pest that deltamethrin will be used to control. Furthermore, the Agency has made the assumption that deltamethrin will replace all competing insecticides on all of the crops for which projected market share data were used. In addition, the Agency has made the assumption that for many of the crops in the dietary analysis, 100% of the crop would be treated. For the stored grains, the PCT estimates are derived from usage data for chlorpyriphos-methyl, historically the most widely used insecticide for control of insect pests in stored grains. The estimates are as follows: Wheat, oats, and barley (avg: 8.0 %, max: 9.0 %); field corn and pop corn (avg: 3.0 %, max: 6.0 %); sweet corn (avg: 2.1 %, max: 3.5 %); sorghum (avg: 3.2 %, max: 3.7 %); and rice (avg: 2.9 %, max: 3.1 %). For all other new uses, it was assumed that 100% of the crop would be treated.

The Agency believes that the three conditions previously discussed have been met regarding PCT estimates for the new deltamethrin registrations. With respect to Condition 1, EPA finds that the PCT information described in Unit II.C.1.iv. for deltamethrin on almonds, apples, canola, cantaloupe, carrots, corn, cucumbers, garlic, onions, pears, peppers, potatoes, soybeans, squash, sunflowers, walnuts, and stored cereal grains is derived from market survey data, which are reliable and have a valid basis. For almonds, apples, canola, cantaloupe, carrots, corn, cucumbers, garlic, onions, pears, peppers, potatoes, soybeans, squash, sunflowers, and walnuts, the PCT estimates are based on current market share data for all alternative insecticides used to control the primary target pest, and the generous assumption that deltamethrin will replace all of the competing insecticides used to control that target pest. For stored grains, the estimate is derived from usage data for chlorpyrifos-methyl, historically the most widely used insecticide for control of insect pests in stored grains. These estimates should not underestimate actual usage of deltamethrin on the new crops/sites.

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 deltamethrin 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 deltamethrin 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 deltamethrin.

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

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

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

Based on FIRST and SCI-GROW models, the EECs of deltamethrin for acute exposures are estimated to be 0.20 parts per billion (ppb) for surface water and 0.006 ppb for ground water. The EECs for chronic exposures are estimated to be 0.067 ppb for surface water and 0.006 ppb for ground water.

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

Deltamethrin is currently registered for use on lawns, turf, golf courses, sod farms, ornamental gardens, perimeter treatment, indoor broadcast, spot, and crack and crevice surface treatment, and pet collars. The end use products are formulated as ready-to-use sprays, granular, dust, wettable powders and liquids to be applied by commercial applicators and/or homeowners depending on the product. These uses include a wide range of application methods including hose-end sprayers, push-type spreader, shaker can, aerosol can, low/high pressure hand wands, injection, airless sprayers, injection syringe, and paint brush/roller used to treat indoors and outdoors.

No dermal endpoint was selected because no systemic toxicity via the dermal route was seen at the limit dose and therefore a dermal risk assessment for handlers was not required. All inhalation MOEs for residential handlers exposure ranged from 3,300 to 1,800,000 and therefore did not exceed the Agency's level of concern.

Based on the use pattern of residential products, duration of postapplication exposure is expected to be short term. As indicated previously no dermal endpoint was selected and therefore no risk from dermal exposure is expected. The Agency concluded that use of an indoor fogger would result in the worst case scenario for assessing postapplication inhalation exposure. The postapplication inhalation MOEs following use of a fogger were greater than the targeted MOE and therefore the risks were not of concern. Fogger postapplication risks are protective of inhalation risks from other indoor products. Furthermore the vapor pressure of deltamethrin is very low (1.5×10^{-8} mm Hg at 25°) and therefore postapplication inhalation exposure is expected to be minimal for indoor uses.

The following postapplication incidental oral scenarios following application to lawns and indoor surfaces (carpet versus hardwood or vinyl floors) were assessed:

i. Short-term oral hand-to-mouth exposure to toddlers and children from indoor use ;

ii. Short-term oral object to mouth exposure to toddlers and children from ingestion of pesticide treated turf; and

iii. Short-term oral exposure to toddlers and children following soil ingestion.

Since the FQPA safety factor for the protection of children and infants was reduced to 3X, a target MOE value of 300 has been identified for residential assessments. MOE values greater than 300 are not considered to be of concern to the Agency. MOE estimates are based on the NOAEL dose level of 1 mg/kg/day established for short-term oral risk assessment.

TABLE 4.—SUMMARY OF SHORT-TERM RESIDENTIAL POSTAPPLICATION MOES.

Exposure Scenario	Oral Dose (mg/kg/day	Oral MOE
Hand-to-Mouth (Indoor Use)	0.0028	340
Object-to-Mouth (Turf)	0.00049	2,000
Soil Ingestion (Turf)	0.0000065	150,000

Note: Episodic incidental ingestion of granules and paint chips was also assessed and was not considered to be of concern to the Agency.

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 deltamethrin and any other substances and deltamethrin 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 deltamethrin has a common mechanism of toxicity with other substances. For information

regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. The toxicology data base for deltamethrin for an FQPA assessment includes developmental toxicity studies in rats, rabbits and mice, a two-generation reproduction toxicity study in rats, acute and subchronic neurotoxicity studies in rats, and studies from the open literature indicating increased susceptibility and neurotoxicity.

Signs of neurotoxicity were seen in guideline acute and subchronic neurotoxicity studies in rats, including salivation, soiled fur, impaired mobility, no reaction to approach and no reaction to touch response observed in the functional observation battery (FOB) in the acute study, and mortality, clinical signs of toxicity, FOB findings, and decreased body weights, body weight gains, and food consumption in the subchronic study. In addition, similar signs of neurotoxicity were observed in several literature studies conducted in rats and mice.

Acceptable developmental toxicity studies in rats and rabbits indicated no evidence of developmental toxicity. In 3 non-guideline multi-species developmental toxicity studies, there is concern for developmental effects that occurred in either the absence of or in the presence of mild maternal toxicity in three species (mice, rats and rabbits). In mice, an increase in delayed ossification in the fetuses was seen in the absence of maternal toxicity at the highest dose tested. In rats, increased delayed ossification was seen in the presence of decreased body weight in the dams. In rabbits, increased fetal death and decreased fetal body weight were seen in the absenceof maternal toxicity at the highest dose tested.

There is qualitative evidence of increased susceptibility only at the highest dose tested in the two-generation toxicity study in rats. Effects were seen in the adults of the F1 generation. These effects were not seen in the P generation or in the F1 rats when they were pups. These effects included increased death, clinical findings (i.e. impaired righting reflexes, hyperactivity, splayed limbs, vocalization, and excessive salivation) and cerebral congestion and/or blood clots at the highest dose tested. Evidence for age-related sensitivity was seen in a published literature study in which the brain concentration of deltamethrin in weanling rats was higher than in adult rats.

Based on clinical signs indicative of neurotoxicity observed in adult animals, concern for the effects seen in the two-generation reproduction study and structural-activity relationship concerns, a developmental neurotoxicity study (DNT) has been required for deltamethrin. The study protocol indicates that the proposed lowest dose in the study is 1 mg/kg/day, which is equivalent to the NOAELs currently selected for dietary and non-dietary risk assessment.

3. *Conclusion*. The hazard-based FQPA Safety Factor has been reduced to 3x for all population subgroups including those comprised of infants and children.

Previously, the Agency determined that the overall FQPA Safety Factor should be retained at 10x due to the lack of an acceptable pre-natal toxicity study in rabbits; the lack of the required developmental neurotoxicity (DNT) study; an overall degree of concern for the qualitative and quantitative evidence of increased susceptibility observed in mice; and residual uncertainties for pre/post-natal toxicity. The default 10x factor encompassed the database uncertainty factor and the Special FQPA Safety Factor.

The Agency has since received and reviewed an acceptable pre-natal developmental toxicity study in rabbits which does not show evidence (quantitative or qualitative) of increased susceptibility. A dose analysis indicated no need for a database uncertainty factor for the lack of a DNT since this study is not expected to lower the doses currently used for the overall risk assessment. Therefore, there is no need for a database uncertainty factor. However, the Special FQPA Safety Factor is needed since there is still a concern for the qualitative evidence of increased susceptibility observed in mice. A Special FQPA Safety Factor of 3X (as opposed to a 10X) was determined to be adequate based on the following weight-of-evidence considerations.

i. The endpoint of concern for risk assessment is already based on the most sensitive endpoint (i.e., clinical signs indicative of neurotoxicity),

ii. In the acute and subchronic neurotoxicity studies, no damage to the neurological system (e.g., neuropathology or alterations in brain weight) was seen, and there was no evidence of malformations or variations of the central nervous system of the fetuses in the pre-natal studies or to offspring in the post-natal study,

iii. The generally accepted mechanism of action for pyrethroids, sodium channel disruption, has not been traditionally associated with developmental neuropathology, and

iv. A dose that was four-fold higher than the dose used for risk assessment was required to cause the two-fold difference in brain concentration of deltamethrin in weanling rats.

The NOAEL of 1.0 mg/kg/day currently used for overall risk assessment is protected by a safety factor of 3X which yields an extrapolated dose of 0.3 mg/kg/day. This dose is an order of magnitude lower than the dose that caused the two-fold decrease in brain concentrations of deltamethrin in the weanling rats. Therefore, a half-log reduction (3X) in the Special FQPA Safety Factor is considered to be sufficiently protective of the concerns for the qualitative susceptibility seen in mice.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a

pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female and youth 13-19), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to deltamethrin will occupy 39% of the aPAD for the U.S. population, 28% of the aPAD for females 13 to 49, 65% of the aPAD for All Infants (< 1 year old), and 60% of the aPAD for Children 1-2 years old. In addition, there is potential for acute dietary exposure to deltamethrin 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 Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO DELTAMETHRIN

Population Subgroup	Exposure (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
General U.S. Population	0.001305	39	0.20	0.006	71
All Infants (< 1 year old)	0.002175	65	0.20	0.006	12
Children 1-2 years old	0.001992	60	0.20	0.006	13
Children 3-5 years old	0.002135	64	0.20	0.006	12
Children 6-12 years old	0.001555	47	0.20	0.006	18
Youth 13-19 years old	0.001010	30	0.20	0.006	70
Adults 20-49 years old	0.000830	25	0.20	0.006	88
Adults 50+ years old	0.000836	25	0.20	0.006	87
Females 13-49 years old	0.000937	28	0.20	0.006	72

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to deltamethrin from food will utilize 3 % of the cPAD for the U.S. population, 7.6 % of the cPAD for Children 1-2 years old. Based on the use pattern, chronic residential exposure to residues of deltamethrin is not expected. In addition, there is potential for chronic dietary exposure to deltamethrin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 6 of this unit:

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

Population Subgroup	Exposure mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.000099	3.0	0.067	0.006	110
All Infants (< 1 year old)	0.000157	4.7	0.067	0.006	32
Children 1-2 years old	0.000252	7.6	0.067	0.006	31
Children 3-5 years old	0.000238	7.1	0.067	0.006	31
Children 6-12 Years	0.000149	4.5	0.067	0.006	32

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

Population Subgroup	Exposure mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Youth 13-19 Years	0.000086	2.6	0.067	0.006	97
Adults 20-49 Years	0.000076	2.3	0.067	0.006	110
Adults 50+ Years	0.000078	2.3	0.067	0.006	110
Females 13-49	0.000077	2.3	0.067	0.006	98

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).

Deltamethrin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for deltamethrin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 2600 for the U.S. Population, 2700 for Females 13-49, 338 for all infants <1 year old, 328 for Children 1-2 years old, and 329 for Children 3-5 years old. These aggregated MOEs include average exposure from deltamethrin residues in food as well as inhalation exposure of adults; oral (hand-to-mouth) exposure of infants and children from the residential uses of deltamethrin resulting from spot, and crack and crevice use and surface treatments to carpet and vinyl surfaces. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of deltamethrin in ground and surface water. After calculating DWLOCs and comparing them to- the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 7 of this unit:

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

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	2,600	300	0.067	0.006	100
Females 13-49	2,700	300	0.067	0.006	89
All infants (<1 year)	338	300	0.067	0.006	3.8
Children 1-2	328	300	0.067	0.006	2.8
Children 3-5	329	300	0.067	0.006	3.0

4. *Intermediate-term risk*. Intermediate term residential exposures are not anticipated from the registered and proposed uses of deltamethrin, therefore, an intermediate term risks are not expected.

5. *Aggregate cancer risk for U.S. population*. Deltamethrin is classified by the Agency as not likely to be carcinogenic in humans, therefore, deltamethrin is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methods based on gas chromatography (GC) with electron capture detection (ECD) are available for enforcing tolerances for residues of deltamethrin. These methods are used for the determination of cis-deltamethrin, trans-deltamethrin, and alpha-R-deltamethrin in various raw agricultural, animal-derived, and processed commodities. In addition, cis-deltamethrin is completely recovered and its trans isomer is partially recovered by one of the multiresidue methods utilized by the Food and Drug Administration for monitoring of pesticide residues. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

Codex Maximum Residue Limits (MRL's) are established on a variety of commodities for residues of deltamethrin in terms of the cis-isomer only. This definition is not compatible with the U.S. tolerances, which also include the trans and alpha-R isomers. However, the cis-isomer is consistently present at much higher levels than the other two isomers in crop field trials. Thus, in numerical terms there is not a significant difference in the tolerance definitions. Therefore, the Agency concludes that it is reasonable to harmonize U.S. tolerance levels numerically with Codex MRL's where feasible. The commodities for which the

U.S. tolerances have been raised for harmonization purposes are meat byproducts of cattle, goats, horses, and sheep (to match the 0.05 ppm Codex MRL for edible mammalian offal); cereal grains; soybean seed (0.1 ppm Codex MRL for legume vegetables); sunflower seed (0.1 ppm Codex MRL on oilseeds); cucurbit vegetables; and wheat bran. The U.S. tolerances on barley bran and rye bran have also been increased since they are based on the data for wheat bran. The data for dry bulb onions in the U.S. support setting the tolerance at the same level as the Codex bulb vegetable tolerance. The following U.S. tolerances can not be harmonized numerically with Codex MRL's due to residues being higher from the requested uses in the U.S. or the tolerances being based on the sum of the analytical method limits of quantitation for the three deltamethrin isomers (versus only the cis-isomer included in Codex MRL's): globe artichoke; meat of cattle, goats, horses, and sheep; stover of field corn, pop corn, sweet corn, and grain sorghum; eggs; pome fruit; green onion; poultry meat and meat byproducts; rapeseed; fruiting vegetables; root vegetables; and tuberous and corm vegetables.

V. Conclusion

Therefore, the tolerance is established for combined residues of deltamethrin, isomers trans-deltamethrin and α-R-deltamethrin, in or on almond hulls; apples, wet pomace; artichoke, globe; barley, bran; cattle, fat; cattle, meat; cattle, meat byproducts; corn, field, forage; corn, field, refined oil; corn, field, stover; corn, pop, stover; corn, sweet, forage; corn, sweet, kernel + cob with husks removed; corn, sweet, stover; egg; fruit, pome, group 11; goat, fat; goat, meat; goat, meat byproducts; grain, aspirated fractions; grain, cereal, group 15, except sweet corn; hog, fat; horse, fat; horse, meat; horse, meat byproducts; lychee (import tolerance); milk, fat (reflecting 0.02 ppm in whole milk); nut, tree, group 14; onion, dry bulb; onion, green; poultry, fat; poultry, meat; poultry, meat byproducts; radish tops; rapeseed; rice, hulls; rye, bran; sheep, fat; sheep, meat; sheep, meat byproducts; sorghum, grain forage; sorghum, grain stover; soybean, seed; soybean, hulls; starfruit (import tolerance); sunflower seeds; vegetable, cucurbit, group 9; vegetable, fruiting, group 8; vegetable, root, except sugar beet, subgroup IB; vegetable, tuberous and corm, subgroup; IC; wheat, bran at 2.5, 1.0, 0.5, 5.0, 0.05, 0.02, 0.05, 0.7, 2.5, 5.0, 5.0, 10, 0.03, 15, 0.02, 0.2, 0.05, 0.02, 0.05, 65, 1.0, 0.05, 0.05, 0.02, 0.05, 0.2, 0.1, 0.1, 0.1, 1.5, 0.05, 0.02, 0.02, 4.0, 0.2, 2.5, 5.0, 0.05, 0.02, 0.05, 0.5, 1.0, 0.1, 0.2, 0.2, 0.1, 0.2, 0.3, 0.2, 0.04, 5.0 parts per million (ppm) respectively .

At the request of the registrant (Bayer Crop Science LP, formerly Aventis CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709]) the following crop tolerances were voluntarily withdrawn from the original petition: head & stem brassica vegetables, leafy vegetables and stone fruits.

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–2004–0331 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 December 27, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0331, 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: September 30, 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 180.435 is amended by alphabetically adding commodities to the table in paragraph (a)(1) to read as follows:

§ 180.435 Deltamethrin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond hulls	2.5
Apples, wet pomace	1.0
Artichoke, globe	0.5

Commodity	Parts per million
Barley, bran	5.0
Cattle, fat	0.05
Cattle, meat	0.02
Cattle, meat byproducts	0.05
Corn, field, forage	0.7
Corn, field, refined oil	2.5
Corn, field, stover	5.0
Corn, pop, stover	5.0
Corn, sweet, forage	10
Corn, sweet, kernel + cob with husks removed	0.03
Corn, sweet, stover	15
* * * * *	
Egg	0.02
Fruit, pome, Group 11	0.2
Goat, fat	0.05
Goat, meat	0.02
Goat, meat byproducts	0.05
Grain, aspirated fractions	65
Grain, cereal, Group 15, except sweet corn	1.0
Hog, fat	0.05
Horse, fat	0.05
Horse, meat	0.02
Horse, meat byproducts	0.05
Lychee*	0.2
Milk, fat (reflecting 0.02 ppm in whole milk)	0.1
Nut, tree, Group 14	0.1
Onion, dry bulb	0.1
Onion, green	1.5
Poultry, fat	0.05
Poultry, meat	0.02
Poultry, meat byproducts	0.02
Radish tops	4.0
Rapeseed	0.2
Rice, hulls	2.5
Rye, bran	5.0
Sheep, fat	0.05
Sheep, meat	0.02
Sheep, meat byproducts	0.05
Sorghum, grain forage	0.5
Sorghum, grain stover	1.0
Soybean, seed	0.1
Soybean, hulls	0.2
Starfruit*	0.2
Sunflower seed	0.1
* * * * *	
Vegetable, cucurbit, Group 9	0.2
Vegetable, fruiting, Group 8	0.3
Vegetable, root, except sugar beet, Subgroup IB	0.2
Vegetable, tuberous and corm, Subgroup IC	0.04
Wheat, bran	5.0

*There are no U.S. registrations for use of deltamethrin on starfruit and lychee.

* * * * *

[FR Doc. 04–24040 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 74, 78, and 101

[ET Docket Nos. 00–258, 95–18; FCC 04–219]

Advanced Wireless Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission found that the bands 1915–1920 MHz paired with 1995–2000 MHz and 2020–2025 MHz paired with 2175–2180 MHz were well suited to provide additional spectrum for AWS use and designated these paired bands for such use. The Commission also modified the rules pertaining to unlicensed PCS service in the 1920–1930 MHz band in order to provide additional flexibility to users of the band to offer both voice and data services using a variety of technologies. The *Third Memorandum Opinion and Order* denies petitions for rulemaking related to the reallocation to AWS in previous rulemakings and the *Fifth Memorandum Opinion and Order* clarifies rules governing relocation of FS licensees.

DATES: Effective November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Shameeka Hunt or Priya Shrinivasan, Office of Engineering and Technology, (202) 418–2472.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order,* ET Docket Nos. 00–258 and 95–18, FCC 04–219, adopted September 9, 2004, and released September 22, 2004. The full text of this Commission decision is available on the Commission's Internet site at *http://www.fcc.gov.* It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Room CY-B402, 445 12th Street, SW., Washington, DC 20554. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Report and Order

1. In the *Sixth Report and Order (Sixth R&O and Third MO&O*) in ET Docket No. 00–258, the Commission continues its ongoing efforts to promote spectrum utilization and efficiency by evaluating spectrum that may be suitable for the provision of new services, including Advanced Wireless Services (AWS). In the *Sixth R&O,* we find that the bands 1915–1920 MHz paired with 1995–2000 MHz and 2020–2025 MHz paired with 2175–2180 MHz—which were all previously reallocated for Fixed and Mobile services—are well suited to provide additional spectrum for AWS use and we designate these paired bands for such use. This action will provide an additional twenty megahertz of spectrum for the introduction of new services and technology. We also modified the rules pertaining to unlicensed PCS services in the 1920–1930 MHz band in order to provide additional flexibility to users of the band to offer both voice and data services using a variety of technologies.

2. The *Sixth R&O* identifies two five + five megahertz spectrum blocks that are especially well suited for AWS use, and find that such a designation will maximize the potential use of the spectrum and promote the deployment of high value service offerings. Specifically, we redesignate the 1915–1920 MHz and 1995–2000 MHz, as well as the 2020–2025 MHz and 2175–2180 MHz spectrum blocks as paired bands suitable for the introduction of new technologies.

A. 1915–1920 MHz and 1995–2000 MHz Bands

3. The Commission concludes that AWS operations in the 1915–1920 MHz band are technically feasible with a ten megahertz frequency separation between Broadband PCS mobile and base operations. We recognize, that additional technical constraints may need to be placed on AWS to avoid impairing incumbent PCS operations. Although we conclude here that this band will be designated for AWS, one goal of the *AWS 2 GHZ Service Rules NPRM* is to adopt technical rules that will protect existing PCS operations from interference.

4. The Commission also concluded that AWS operations can be deployed in the 1995–2000 MHz band. Several parties contend that technical constraints will need to be placed on new AWS operations in the 1995–2000 MHz band in order to avoid interference to adjacent MSS operations in the 2020–2025 MHz band. However, we note that prior to the reallocation of MSS spectrum in the 1990–2000 MHz band to fixed and mobile services, existing Broadband PCS was immediately adjacent to the MSS. Thus, by redesignating the 1995–2000 MHz band

for AWS, fixed and mobile services will remain adjacent to MSS. Because we previously determined that PCS can exist adjacent to MSS, we likewise find that the 1995–2000 MHz band is suitable for an AWS designation. As with the 1915–1920 MHz band, we will consider specific technical requirements that are necessary for new AWS entrants as part of the *AWS 2 GHZ Service Rules NPRM.*

Redesignation

5. Based on the Commission's determination that additional spectrum is needed for AWS use, and because of the characteristics of the 1915–1920 MHz band that make it well suited for such use, we conclude that such a designation will promote efficient use of the spectrum, allow for the rapid introduction of high-value services, and is otherwise preferable to the other option that has been put forth—introduction of isochronous UPCS rules into the band. Based on the discussions, the Commission found that it is technically feasible to introduce AWS in the band without impairing incumbent PCS with a separation distance between the Broadband PCS mobile and base transmit bands of ten megahertz, and we intend to develop technical rules to ensure that AWS in this band will not interfere with existing PCS operations. Further, the Commission concludes that, given the opportunity, licensees and manufacturers will develop equipment and business plans that put this spectrum to use that will benefit the public. For these reasons, and given the lack of unlicensed use of the 1915–1920 MHz band under the existing rules, the Commission finds that the public interest is best served by redesignating five megahertz of spectrum in the 1915–1920 MHz band for AWS on a primary basis to support the types of high powered mobile applications associated with AWS and Broadband PCS expansion and pairing it with the five megahertz of spectrum at 1995–2000 MHz that we previously designated for AWS. Accordingly, we modify the Table of Allocations to reflect the applicable rule parts for these services, and update Part 15 rules to remove the 1915–1920 MHz band from asynchronous UPCS use. Because their pleadings are inconsistent with the AWS designation for the 1915–1920 MHz band we adopted, we deny the waiver petitions from Lucent, Ascom, Alaska Power, RBM, and UTStarcom & Drew University. We likewise deny the petitions for rulemaking from WINForum and UTStarcom.

B. 2020–2025 MHz and 2175–2180 MHz Bands

6. The Commission recognizes that many of the comments have been outdated by more recent developments in this proceeding. For example, some of the bands identified by commenters are no longer available to be paired. We also reject those comments that would have us make the 2020–2025 MHz band available for Federal Government operations because we have already proposed relocation procedures that would not require Federal Government relocation into the band. Moreover, such a designation would limit use of this spectrum by the public and would require us to re-evaluate our BAS relocation procedures to accommodate the entry of Federal Government users in the band. We also disagree with those commenters that support relocating displaced UPCS to the 2020–2025 MHz band, given our previous analysis of asynchronous UPCS operations, the conclusion that there are no current operations to be displaced, and our findings that additional AWS spectrum will promote new technologies and services, make efficient use of the spectrum, and use the spectrum to its highest potential.

7. As part of our decision to redesignate the 2020–2025 MHz and 2155–2180 MHz bands in the *AWS Third R&O,* we also proposed options for pairing the 2020–2025 MHz band with spectrum in the 2155–2180 MHz band for new Fixed and Mobile services, including AWS. Because these bands have been redesignated for AWS, we find the 2020–2025 MHz band suitable for pairing with the 2175–2180 MHz band. We also note that AWS entrants may also benefit from the introduction of terrestrial services in the adjacent MSS band under MSS/ATC authority. Pairing 2020–2025 MHz with 2175–2180 MHz could benefit from the design of equipment in the adjacent MSS spectrum—in particular, equipment deployed to provide MSS/ATC service—which in turn could allow for potential economies of scale and generally promote the more rapid deployment of new service offerings.

C. Relocation and Reimbursement

Relocation and Reimbursement in the 1915–1920 MHz Band

8. In conjunction with our redesignation of the 1915–1920 MHz band for AWS, the Commission finds that UTAM must be fully and fairly reimbursed for relocating incumbent microwave users in this band. We agree with commenters that UTAM should be made whole for the investments it has made in clearing the UPCS bands. Accordingly, UTAM is entitled to reimbursement of twenty-five percent—on a *pro-rata* basis—of the total costs it has incurred, including its future payment obligations for links it has relocated, as of the date that a new entrant gains access to the 1915–1920 MHz spectrum band. A new AWS licensee in the 1915–1920 MHz band must pay this amount before it begins operations in the band, and under any specific terms or conditions that we adopt in the *AWS 2 GHz Service Rules NPRM.*

9. The Commission's decision to require new entrants in the 1915–1920 MHz band to reimburse UTAM a *pro rata* share of costs, in addition to being consistent with the comments supporting a reimbursement mechanism for UTAM, offers a fair and easy procedure to implement. Because UTAM has already cleared most of the incumbent microwave links deployed across the entire 1910–1930 MHz band, this reimbursement plan represents the most reasonable and easiest approach to address the relocation costs that UTAM has already incurred. We believe that such a course is superior to the difficult and complex prospect of making retroactive calculations for apportionment and represents an equitable and administratively efficient means of compensating UTAM.

Relocation and Reimbursement in the 1995–2000 MHz and 2020–2025 MHz Bands

10. We first conclude that AWS licensees that do not begin operations in the 1990–2025 MHz band until after this spectrum has been cleared will not have to participate in the relocation process of incumbent BAS licensees. These AWS licensees will receive unencumbered spectrum, the value of which will be reflected in the auction price. Further, these late-entering AWS licensees will not have any reimbursement obligation to Nextel, if Nextel has received credit for BAS relocation costs in the 800 MHz true-up. These AWS licensees may, under certain circumstances, have reimbursement obligations to MSS entrants, otherwise, these AWS licensees would not have a reimbursement obligation to MSS entrants.

11. The Commission will require an AWS licensee that enters the band prior to the milestones established for Nextel and MSS licensees to participate in the BAS relocation process. AWS licensees shall generally follow a relocation plan modeled on the policies set forth in our earlier *Emerging Technologies*

proceeding and, in particular, follow the requirement that new entrants provide comparable facilities to incumbents that are relocated. Accordingly, AWS licensees must provide comparable facilities to BAS incumbents that are relocated. Further, AWS licensees, Nextel and MSS licensees, each of which individually is authorized to operate on a fraction of the band, will mutually benefit from the clearance of all BAS licensees in the band. An AWS licensee will be responsible, similar to other new entrants, to relocate all BAS operations from 1990–2025 MHz, even if it ultimately does not build its own facilities in some geographic areas. As we determined in the *MSS Third R&O* and affirmed in the *800 MHz R&O,* a one-phase relocation plan avoids the possibility of BAS operations on three different band plans, and eliminates the potential disruption and down time to BAS associated with being relocated under two different phases in a short period of time. We also note that our decision to accommodate AWS entrants into the band does not alter our need to minimize the disruption to incumbent BAS operations during the transition. Therefore, we believe that, in the event BAS relocation has not been completed, including AWS licensees as participants in the relocation of all BAS operations from the 1990–2025 MHz band strikes an appropriate balance that is not unduly burdensome on AWS entrants, while also fair to the BAS incumbents and the other entrants in the band.

12. All entrants must clear the entire 1990–2025 MHz band (a total of thirty-five megahertz of spectrum) while only operating in 1990–1995 MHz (a total of five megahertz of spectrum for Nextel), in 2000–2020 MHz (a total of twenty megahertz of spectrum for MSS), and in 1995–2000 MHz and 2020–2025 MHz (a total of ten megahertz of spectrum for AWS). Therefore, the *pro rata* share for AWS licensees, collectively, represents the costs to relocate two-sevenths of the spectrum (one-seventh for each five megahertz block).

Relocation in the 2175–2180 MHz Band

13. Given the Commission's decision in the *AWS Second R&O* to apply the modified procedures to AWS licensee relocation of FS in the 2110–2150 MHz band, we conclude that it is appropriate to apply the same procedures to the relocation of FS by AWS licensees in the 2175–2180 MHz band. Specifically, §§ 101.69 through 101.82 of the rules set forth the provisions governing the transition from FS to ET services, including both the more generic ET relocation procedures for PCS and AWS and the MSS modifications. For example, these rules set forth, among other matters, provisions regarding voluntary and mandatory periods, sunset provisions, involuntary relocation procedures, and the allocation of reimbursement expenses by subsequently entering ET licensees. By making the modified MSS provisions applicable in the 2175–2180 MHz band, new AWS entrants will be governed by the same relocation rules that apply to AWS entrants in the other bands subject to part 101 relocation. In short, we believe that relocation procedures for AWS in the 2175–2180 MHz band that are consistent with the relocation procedures discussed in this and related proceedings will foster a more efficient roll-out of AWS, will minimize confusion among the parties, and will thereby serve the public interest.

D. Additional Flexibility in the 1920–1930 MHz Band

14. We are modifying the rules for UPCS in the 1920–1930 MHz band to provide additional flexibility for the use of other types of voice based systems. Specifically, we will remove the requirement to use specified channels, allow devices to transmit with a maximum bandwidth of 2.5 megahertz, and we will delete the packing rule. In addition, we will allow asynchronous operation in this band. We believe that these changes will promote the introduction of spectrally efficient equipment that will be widely supported by the public.

Summary of the Third Memorandum Opinion and Order

15. In the *Third Memorandum Opinion and Order* in ET Docket No. 00–258, the Commission denies a petition for reconsideration jointly filed by XM and Sirius that claims that the Commission failed to consider their comments regarding use of the 2360–2395 MHz band as replacement spectrum for users relocated from the 1710–1755 MHz and 2110–2155 MHz bands, and the effect that such use would have on adjacent satellite systems.

16. Also, the Commission denies petitions for reconsideration filed by Sprint and WCA that sought comparable replacement spectrum and full compensation for relocation costs for displaced Multipoint Distribution Service (MDS) licensees in the 2150–2162 MHz band.

17. Additionally, the Commission dismisses a petition for reconsideration filed by PCIA that sought modification of § 101.99 of the rules to establish a clearinghouse to oversee cost-sharing procedures associated with incumbent relocation in the 2110–2150 MHz band.

18. Finally, the Commission denies petitions for reconsideration filed by Celsat, CTIA, ICO, SIA, and TMI and TerreStar that oppose the decision to reallocate portions of the 2 GHz MSS spectrum.

Summary of the Fifth Memorandum Opinion and Order

19. In the *Fifth Memorandum Opinion and Order* in ET Docket No. 95–18, the Commission grants in part, by clarifying certain rules, and otherwise denies a petition for clarification and reconsideration jointly filed by the American Petroleum Institute and the United Telecom Council concerning the negotiation and relocation procedures for incumbent Fixed service licensees in the 2110–2150 MHz and 2180–2200 MHz bands.

Final Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act (RFA) [1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Notice of Proposed Rulemaking (Third NPRM).*[2] The Commission sought written public comments on the proposals in the *Third NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

Need for, and Objectives of, the Sixth Report and Order

21. The *Sixth Report and Order* (*Sixth R&O*) continues our efforts to allocate spectrum that can be used for the provision of advanced wireless services (AWS) to the public, which in turn supports our obligations under section 706 of the 1996 Telecommunications Act [4] and, more generally, serves the public interest by promoting rapid and efficient radio communications facilities.

22. The *Sixth R&O* discusses the need for spectrum allocations to allow for the provision of AWS. Specifically, it:

• Refutes argument that Broadband PCS mobile and base transmit bands

[1] *See* 5 U.S.C. 603. The RFA (codified at 5 U.S.C. 601–612) has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, title II, 110 Stat. 857 (1996).

[2] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00–258, IB Docket No. 99–81, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order,* 18 FCC Rcd 2223 (2003).

[3] *See* 5 U.S.C. 604.

[4] Section 706 of the Communications Act of 1934, as amended, codified at 47 U.S.C. 157.

must have separation of fifteen megahertz, and found that a ten megahertz separation is suitable without causing interference between services in these bands.

- Redesignated the 1915–1920 MHz and 2020–2025 MHz bands for AWS use.
- Redesignated the 2020–2025 MHz and 2175–2180 MHz bands for AWS use.
- Paired the 1915–1920 and 1995–2000 MHz bands and 2020–2025 and 2175–2180 MHz bands for the provision of AWS use.
- Adopts the UTAM reimbursement plan for the 1915–1920 MH_z band, allowing relocation efforts of microwave links to continue in the 1910–1930 MH_z band without disruption, while making the band available for other spectrum efficient services.
- Denies all petitions for rulemaking and petitions for waivers filed in this proceeding regarding the 1910–1920 MH_z band.
- Provided additional flexibility for UPCS operations in the 1920–1930 MH_z band.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

23. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

24. 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 rules adopted herein.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[7] Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[8] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[9] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[10] Nationwide, there are approximately 1.6 million small organizations.[11] The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[12] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[13] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

25. *Broadcast Auxiliary Service (BAS).* BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the stations). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: (1) For TV BAS, we will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than $12.0 million;[14] (2) For Aural BAS, we will use the size standard for Radio Stations, which consists of all such companies having annual receipts of no more than $6 million;[15] (3) For Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

26. According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[16] must be included.[17] Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).[18] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard. According to Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States had revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and, that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations[19] are included.[20] Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action.

27. *Cable Antenna Relay Service (CARS).* CARS includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and other Program Distribution, which consists of all such companies having annual receipts of no more than $12.5 million. According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.[21] Of this total, 1,180 firms had annual receipts of under $10 million, and an

[5] 5 U.S.C. 604(a)(3).

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[8] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[9] 15 U.S.C. 632.

[10] 5 U.S.C. 601(4).

[11] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[12] 5 U.S.C. 601(5).

[13] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[14] 13 CFR 121.201, NAICS code 515120.

[15] *Id.* NAICS code 515112.

[16] ''Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).

[17] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size.'' 13 CFR 121.103(a)(4).

[18] FCC News Release, ''Broadcast Station Totals as of September 30, 2002'' (Nov. 6, 2002).

[19] ''Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[20] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121.103(a)(4).

[21] 13 CFR 121.201, NAICS code 517510 (changed from 513220 in October 2002).

additional fifty-two firms had receipts of $10 million to $24,999,999.00.[22] Thus, under this standard, the majority of firms can be considered small.

28. *Fixed Microwave Services.* Microwave services include common carrier,[23] private-operational fixed,[24] and broadcast auxiliary radio services.[25] At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA's definition applicable to wireless and other telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.[26] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[27] Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.[28] Thus, under this size standard, majority of firms can be considered small.

29. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition. Of these licenses, approximately fourteen are issued for frequencies in the Emerging Technology bands affected by this proceeding. This, assuming that these entities also qualify as small businesses, as many as fourteen small business licensees could be affected by the rules we adopt. We note that these entities have been subject to relocation by UTAM under rules originally adopted in the Commission's *Emerging Technologies* proceeding. UTAM is the Commission's frequency coordinator for UPCS devices in the 1910–1930 MH_z band. The *Sixth R&O* anticipates that these general relocation rules will continue to apply to FS microwave licensees and does not propose to modify the class of licensees that are subject to these relocation provisions.

30. *Mobile Satellite Service.* Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have $12.5 million or less in annual revenues.[29] Currently, nearly a dozen entities are authorized to provide voice MSS in the United States. We have ascertained from published data that four of those companies are not small entities according to the SBA's definition,[30] but we do not have sufficient information to determine which, if any, of the others are small entities. We anticipate issuing several licenses for 2 GH_z mobile earth stations that would be subject to the requirements we are adopting here. We do not know how many of those licenses will be held by small entities, however, as we do not yet know exactly how many 2 GH_z mobile-earth-station licenses will be issued or who will receive them.[31] The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.

31. *Unlicensed Personal Communications Services.* As its name indicates, UPCS is not a licensed service. UPCS consists of intentional radiators operating in the frequency bands 1920–1930 MH_z and 2390–2400 MH_z, that provide a wide array of mobile and ancillary fixed communication services to individuals and businesses. The *Sixth R&O* affects UPCS operations in the 1920–1930 MH_z band; operations in those frequencies are given flexibility to deploy both voice and data-based services. There is no accurate source for the number of operators in the UPCS. The Commission has not developed a definition of small entities applicable to UPCS equipment manufacturers. However, the SBA has developed a small business size standard, Cellular and Other Wireless Carriers, which consists of all such companies having 1500 or fewer employees.[32] According to the Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[33] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[34] Thus, under this size standard, the great majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. The *Sixth R&O* addresses the possible use of the bands 1915–1920 MHz and 1995–2000 MHz to support the introduction of new AWS, but does not propose service rules. Thus, the item contains no new reporting requirements. The *Sixth R&O* modifies

[22] *Id.*

[23] 47 CFR part 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[24] Persons eligible under parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[25] Auxiliary Microwave Service is governed by part 74 of title 47 of the Commission's rules. *See* 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[26] 13 CFR 121.201, NAICS code 517212 (formerly 213322).

[27] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 217212 (issues Oct. 2000).

[28] *Id.* 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.''

[29] 13 CFR 121.201, North American Industry Classification System (''NAICS'') code 51740, formerly NAICS code 513340.

[30] Comsat Corporation, Globalstar USA, Honeywell International, Inc., and Mobile Satellite Ventures Subsidiary LLC (''MSVS'') each holds one of the current licenses for 1.6 GH_z mobile satellite stations. Comsat Corporation reported annual revenue of $618 million in its most recent annual report to the U.S. Securities and Exchange Commission (''SEC''). Globalstar USA (formerly AirTouch Satellite Services) is a indirectly majority-owned by Thermo Satellite LP, a Colorado limited partnership. (See International Authorizations Granted, Public Notice, 19 FCC Rcd 4079 (2004)). In another annual report filed with the SEC, Honeywell International Inc. reported receiving sales revenue of $23.7 billion in 2001. MSVS is wholly owned by a limited partnership that is 48.1% owned by Motient Corporation and 39.9% owned by a limited partnership controlled by a wholly-owned subsidiary of BCE, Inc. In an annual report filed with the SEC, Motient reported revenue of $93.3 billion for calendar year 2001. BCE, Inc. reports in its corporate Web site, *http://www.bce.ca/en/investors/reports/annual/bce/2002annual/bce_ar02_04_e.html,* that it received $19.8 billion of revenue in 2002.

[31] There are currently four space-station authorizations for Mobile Satellite Service systems that would operate with 2 GH_z mobile earth stations. Although we know the number and identity of the space-station operators, neither the number nor the identity of future 2 GHz mobile-earth-station licensees can be determined from that data.

[32] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

[33] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 517212 (issued Oct. 2000).

[34] *Id.* 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.''

the procedures by which incumbent licensees in the 1915–1920 MHz and 1995–2000 MHz band are to be relocated by new entrants. The relocation procedures set forth in the *Sixth R&O* are based on relocation procedures that had been previously adopted for larger blocks of spectrum that include the bands 1915–1920 MHz and 1995–2000 MHz, but that did not account for new AWS entrants in these bands. For example, the *Sixth R&O* determines that the principle that new licensees must reimburse UTAM, Inc., for a proportional share of the band-clearing costs UTAM has incurred in relocating the 1910–1930 MHz band should apply to new AWS entrants in the 1915–1920 MHz band. The *Sixth R&O* modifies previously established recordkeeping and other compliance requirements but does not substantively add to those requirements. Licensees that were previously subject to relocation requirements will still be subject to relocation requirements, but now may be involved in relocation discussions with additional entities—*i.e.* AWS licensees. Similarly, new entrants that were required to share relocation costs now may share those costs with new AWS licensees.

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

33. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities.'' [35]

34. The Commission considered and rejected proposals to not redesignate the 1915–1920 MHz band for AWS. One alternative proposed by Ascom, Siemens, Verizon and others would have had us retain this band for unlicensed PCS use and modify the pre-existing UPCS rules to allow for a greater variety of applications in the band. To the extent that small entities are UPCS users, and users of unlicensed bands are typically exempt from the reporting requirements that are necessary to secure, maintain, and renew a license that is a necessary requirement for operation under our licensed service rules, the retention of the 1915–1920 MHz band for UPCS might have minimized the economic impact on small entities. We rejected this approach because we concluded that it is feasible to introduce high powered licensed services into the band, there is a need for additional spectrum for AWS applications, and there are no current users of the 1915–1920 MHz band. Even if we were to modify the rules to allow greater UPCS use of the band, the types of applications that could be deployed under the UPCS rules would not provide the public benefits associated with AWS applications.

[35] U.S.C. 603(c)(1)–(c)(4).

Ordering Clauses

35. Pursuant to Sections 1, 4(i), 303(f) and (r), 309, 316, 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(f) and (r), 309, 316, and 332, the Report and Order and the rules specified in Appendix A will become effective November 26, 2004.

36. The Petitions for Rulemaking filed by the Wireless Information Networks Forum and UTStarcom Inc., and the Petitions for Waiver filed by Lucent Technologies Inc., UTStarcom Inc. and Drew University, Ascom Wireless Solutions Inc., Alaska Power & Telephone Company Inc., and RBM Communications *Are denied.*

37. Pursuant to sections 4(i), 302, 303(e) 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, the joint petition for clarification and reconsideration filed by the American Petroleum Institute and the United Telecom Council (API/UTC), in ET Docket No. 95–18, *Is granted* IN PART to the extent discussed in the NPRM, and otherwise *Is denied.*

38. The Petitions for Reconsideration filed by Sirius and XM, Sprint, and WCA *Are denied.*

39. The Petition for Partial Reconsideration filed by PCIA—The Wireless Infrastructure Association *Is dismissed.*

40. The Petitions for Reconsideration filed by Celsat, CTIA, ICO, SIA, and TMI and TerreStar *Are denied.*

41. 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.

Congressional Review Act

42. The Commission will send a copy of the Sixth Report and Order including FRFA, 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).

List of Subjects in 47 CFR Parts 15, 74, 78, and 101

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 15, 74, 78, and 101 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544A.

■ 2. Section 15.301 is revised to read as follows:

§ 15.301 Scope.

This subpart sets out the regulations for unlicensed personal communications services (PCS) devices operating in the 1920–1930 MHz and 2390–2400 MHz frequency bands.

■ 3. Section 15.303 is amended by revising paragraph (g) to read as follows:

§ 15.303 Definitions.

* * * * *

(g) *Personal Communications Services (PCS) Devices [Unlicensed].* International radiators operating in the frequency bands 1920–1930 MHz and 2390–2400 MHz that provide a wide array of mobile and ancillary fixed communication services to individuals and businesses.

* * * * *

■ 4. Section 15.311 is revised to read as follows:

§ 15.311 Labeling requirements.

In addition to the labeling requirements of § 15.19(a)(3), all devices operating in the frequency band 1920–1930 MHz authorized under this subpart must bear a prominently located label with the following statement:

Installation of this equipment is subject to notification and coordination with UTAM, Inc. Any relocation of this equipment must be coordinated through, and approved by UTAM.

UTAM may be contacted at 1–800–429–8826.

■ 5. Section 15.319 is amended by revising paragraph (a) to read as follows:

§ 15.319 General technical requirements.

(a) The 2390–2400 MHz band is limited to use by asynchronous devices under the requirements of § 15.321. The 1920–1930 MHz sub-band is limited to use by devices under the requirements of § 15.323.

* * * * *

■ 6. Section 15.321 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 15.321 Specific requirements for asynchronous devices operating in the 2390–2400 MHz band.

(a) Operation shall be contained within the 2390–2400 MHz band. The emission bandwidth of any intentional radiator operating in these bands shall be no less than 500 kHz.

(b) All systems of less than 2.5 MHz emission bandwidth shall start searching for an available spectrum window within 3 MHz of the band edge at 2390 or 2400 MHz while systems of more than 2.5 MHz emission bandwidth will first occupy the center half of the band. Devices with an emission bandwidth of less than 1.0 MHz may not occupy the center half of the band if other spectrum is available.

* * * * *

■ 7. Section 15.323 is amended by revising the heading, removing and reserving paragraph (b), and revising paragraphs (a), (c) introductory text, (c)(5), (c)(11), and (d) to read as follows:

§ 15.323 Specific requirements for devices operating in the 1920–1930 MHz sub-band.

(a) Operation shall be contained within the 1920–1930 MHz band. The emission bandwidth shall be less then 2.5 MHz. The power level shall be as specified in § 15.319(c), but in no event shall the emission bandwidth be less than 50 kHz.

* * * * *

(c) Devices must incorporate a mechanism for monitoring the time and spectrum windows that its transmission is intended to occupy. The following criteria must be met:

* * * * *

(5) If access to spectrum is not available as determined by the above, and a minimum of 40 duplex system access channels are defined for the system, the time and spectrum windows with the lowest power level below a monitoring threshold of 50 dB above the thermal noise power determined for the emission bandwidth may be accessed. A device utilizing the provisions of this paragraph must have monitored all access channels defined for its system within the last 10 seconds and must verify, within the 20 milliseconds (40 milliseconds for devices designed to use a 20 milliseconds frame period) immediately preceding actual channel access that the detected power of the selected time and spectrum windows is no higher than the previously detected value. The power measurement resolution for this comparison must be accurate to within 6 dB. No device or group of co-operating devices located within 1 meter of each other shall during any frame period occupy more than 6 MHz of aggregate bandwidth, or alternatively, more than one third of the time and spectrum windows defined by the system.

* * * * *

(11) An initiating device that is prevented from monitoring during its intended transmit window due to monitoring system blocking from the transmissions of a co-located (within one meter) transmitter of the same system, may monitor the portions of the time and spectrum windows in which they intend to receive over a period of at least 10 milliseconds. The monitored time and spectrum window must total at least 50 percent of the 10 millisecond frame interval and the monitored spectrum must be within 1.25 MHz of the center frequency of channel(s) already occupied by that device or co-located co-operating devices. If the access criteria is met for the intended receive time and spectrum window under the above conditions, then transmission in the intended transmit window by the initiating device may commence.

* * * * *

(d) Emissions outside the sub-band shall be attenuated below a reference power of 112 milliwatts as follows: 30 dB between the sub-band and 1.25 MHz above or below the sub-band; 50 dB between 1.25 and 2.5 MHz above or below the sub-band; and 60 dB at 2.5 MHz or greater above or below the sub-band. Emissions inside the sub-band must comply with the following emission mask: In the bands between 1B and 2B measured from the center of the emission bandwidth the total power emitted by the device shall be at least 30 dB below the transmit power permitted for that device; in the bands between 2B and 3B measured from the center of the emission bandwidth the total power emitted by an intentional radiator shall be at least 50 dB below the transmit power permitted for that radiator; in the bands between 3B and the sub-band edge the total power emitted by an intentional radiator in the measurement bandwidth shall be at least 60 dB below the transmit power permitted for that radiator. ''B'' is defined as the emission bandwidth of the device in hertz. Compliance with the emission limits is based on the use of measurement instrumentation employing peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 8. Section 74.690 is amended by revising paragraph (a) to read as follows:

§ 74.690 Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.

(a) New Entrants are collectively defined as those licensees proposing to use emerging technologies to implement Mobile Satellite Services in the 2000–2020 MHz band (MSS licensees), those licensees authorized after July 1, 2004 to implement new Fixed and Mobile services in the 1990–1995 MHz band, and those licensees authorized after September 9, 2004 in the 1995–2000 MHz and 2020–2025 MHz bands. New entrants may negotiate with Broadcast Auxiliary Service licensees operating on a primary basis and fixed service licensees operating on a primary basis in the 1990–2025 MHz band (Existing Licensees) for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025–2110 MHz band, to other authorized bands, or to other media; or, alternatively, would discontinue use of the 1990–2025 MHz band. New licensees in the 1995–2000 MHz and 2020–2025 MHz bands are subject to the specific relocation procedures adopted in WT Docket 04–356.

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

■ 9. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066,

1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 10. Section 78.40 is amended by revising paragraph (a) to read as follows:

§ 78.40 Transition of the 1990–2025 MHz band from the Cable Television Relay Service to emerging technologies.

(a) New Entrants are collectively defined as those licensees proposing to use emerging technologies to implement Mobile Satellite Services in the 2000–2020 MHz band (MSS licensees), those licensees authorized after July 1, 2004 to implement new Fixed and Mobile services in the 1990–1995 MHz band, and those licensees authorized after September 9, 2004 in the 1995–2000 MHz and 2020–2025 MHz bands. New entrants may negotiate with Cable Television Relay Service licensees operating on a primary basis and fixed service licensees operating on a primary basis in the 1990–2025 MHz band (Existing Licensees) for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025–2110 MHz band, to other authorized bands, or to other media; or, alternatively, would accept a sharing arrangement with the New Entrants that may result in an otherwise impermissible level of interference to the Existing Licensee's operations. New licensees in the 1995–2000 MHz and 2020–2025 MHz bands are subject to the specific relocation procedures adopted in WT Docket 04–356.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

■ 11. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 12. Section 101.69 is amended by revising the introductory text, paragraphs (b) and (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services, emerging technologies, and other related services.

Fixed Microwave Services (FMS) in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands have been allocated for use by emerging technology (ET) services, including Personal Communications Services (PCS), Advanced Wireless Services (AWS), and Mobile Satellite Services (MSS). The rules in this section provide for a transition period during which ET licensees may relocate existing FMS licensees using these frequencies to other media or other fixed channels, including those in other microwave bands.

* * * * *

(b) Except as provided in paragraph (c) and (f) of this section, FMS operations in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands, with the exception of public safety facilities defined in § 101.77, will continue to be co-primary with other users of this spectrum until two years after the FCC commences acceptance of applications for ET service (voluntary negotiation period), and until one year after an ET licensee initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). In the 1920–1930 MHz band allocated for unlicensed PCS, FMS operations will continue to be co-primary until one year after UTAM, Inc. initiates negotiations for relocation of the fixed microwave licensee's operations. Except as provided in paragraph (c) of this section, public safety facilities defined in § 101.77 will continue to be co-primary in these bands until three years after the Commission commences acceptance of applications for an emerging technology service (voluntary negotiation period), and until two years after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). If no agreement is reached during either the voluntary or mandatory negotiation periods, an ET licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the ET licensee meets the conditions of § 101.75.

* * * * *

(d) Relocation of FMS licensees in the 2110–2150 and 2160–2200 MHz band will be subject to mandatory negotiations only. Except as provided in paragraph (e) of this section, mandatory negotiation periods are defined as follows:

(1) Non-public safety incumbents will have a two-year mandatory negotiation period; and

(2) Public safety incumbents will have a three-year mandatory negotiation period.

(e) Relocation of FMS licensees by Mobile-Satellite Service (MSS) licensees, including MSS licensees providing Ancillary Terrestrial Component (ATC) service, will be subject to mandatory negotiations only. Mandatory negotiation periods that are triggered in the first instance by MSS/ATC licensees are defined as follows:

(1) The mandatory negotiation period for non-public safety incumbents will end December 8, 2004.

(2) The mandatory negotiation period for public safety incumbents will end December 8, 2005.

(f) AWS licensees operating in the 1910–1920 MHz and 2175–2180 MHz bands will follow the requirements and procedures set forth in ET Docket No. 00–258 and WT Docket No. 04–356.

■ 13. Section 101.73 is amended by revising paragraphs (a) and (d) introductory text to read as follows:

§ 101.73 Mandatory negotiations.

(a) If a relocation agreement is not reached during the voluntary period, the ET licensee may initiate a mandatory negotiation period. This mandatory period is triggered at the option of the ET licensee, but ET licensees may not invoke their right to mandatory negotiation until the voluntary negotiation period has expired. Relocation of FMS licensees by Mobile-Satellite Service (MSS) licensees, including MSS licensees providing Ancillary Terrestrial Component (ATC) service, will be subject to mandatory negotiations only.

* * * * *

(d) Provisions for Relocation of Fixed Microwave Licensees in the 2110–2150 and 2160–2200 MHz bands. Except as otherwise provided in § 101.69(e) pertaining to FMS relocations by MSS/ATC licensees, mandatory negotiations will commence when the ET licensee informs the fixed microwave licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the fixed microwave licensee with comparable facilities, defined as facilities possessing the following characteristics:

* * * * *

[FR Doc. 04–23835 Filed 10–26–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 207
Wednesday, October 27, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19463; Directorate Identifier 2004–NE–14–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45A, CF6–50A, CF6–50C, and CF6–50E Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for General Electric Company (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines that have not incorporated GE Service Bulletin (SB) No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or that have not incorporated paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003. This proposed AD would require inspecting the stage 1 low pressure turbine (LPT) blades for damage and replacement of the LPT module if necessary. This proposed AD results from a report of a stud that separated from a turbine mid frame (TMF) strut and from an updated analysis of strut stud failures. We are proposing this AD to prevent an uncontained failure of the engine and possible damage to the airplane caused by failure of TMF strut studs.

DATES: We must receive any comments on this proposed AD by December 27, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we post new AD actions on the DMS and assign a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket No. is in the form ''Docket No. FAA–200X–XXXXX.'' Each DMS docket also lists the Directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19463; Directorate Identifier 2004–NE–14–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DMS web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The FAA recently heard from GE of a TMF strut stud and an LPT stage 1-to-stage 2 disk joint bolt failure found during engine disassembly. GE reported one strut stud failure on a first-run engine, and three uncontained engine failures in 1984 and 1985, caused by reused strut studs. GE also reported nine strut stud failures on engines removed for other causes. Strut stud failures can result in hard debris in the LPT flowpath and cause damage to LPT airfoils. Borescope inspection for damage to the stage 1 LPT blades can identify the effects of a strut stud separation event. Ten unscheduled engine removals have occurred due to evidence of strut stud failure. Twenty strut stud failures have been found during routine shop inspections. GE issued SB No. 72–0897 in March 1987 that introduced an inspection and an improved strut stud configuration. Since that SB was issued, one uncontained engine failure occurred in 1996, two findings of stud failures on engines

removed for other causes, and four unscheduled engine removals have occurred due to strut stud failures.

GE found that the cause of strut stud failure may be insufficient clearance between the LPT stage 1 nozzle support and the sleeve assembly that is fitted to the TMF. During engine operation, thermal growth differences can cause bending and reduced low-cycle-fatigue life of the strut studs that join the nozzle support to the TMF through the sleeve assembly. GE also found that the reuse of strut studs during LPT assembly can increase the probability of a strut stud failure.

GE's analysis shows that continued operation with one or more failed strut studs can result in LPT flow path damage, separation of adjacent strut studs, and separation of the bolts connecting the LPT stage 1 and stage 2 disks. GE's analysis also shows that continued operation with separated bolts can lead to overspeed and an uncontained failure of the stage 1 disk. This condition, if not corrected, could result in an uncontained failure of the engine and possible damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of GE Alert Service Bulletin (ASB) No. CF6–50 S/B 72–A1251, dated September 24, 2003, that describes procedures for initial and repetitive borescope inspections of stage 1 blades for damage caused by separated strut studs, and replacement of the LPT module if stage 1 LPT blade damage exceeds aircraft maintenance manual limits.

GE CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines that have incorporated GE SB No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or that have incorporated paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003, are exempt from this proposed AD. Those incorporations increase the clearance of the stage 1 LPT nozzle and the sleeve fitted to the turbine mid frame, which eliminates the cause of failure of TMF strut studs.

Differences Between the Proposed AD and the Manufacturer's Service Information

GE ASB No. CF6–50 S/B 72–A1251, dated September 24, 2003, does not provide for inspection of engines that have already accumulated more than 3,000 cycles-since-new (CSN) or 500 cycles-since-last-inspection (CSLI). This proposed AD would allow up to 150 cycles-in-service after the effective date of the AD for compliance for these engines.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require initial and repetitive borescope inspections of stage 1 LPT blades for damage and replacement of the LPT module if damage exceeds aircraft maintenance manual limits.

The proposed AD would require you to use GE ASB No. CF6–50 S/B 72–A1251, dated September 24, 2003, to perform these actions.

Costs of Compliance

There are about 2,079 GE CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines of the affected design in the worldwide fleet. We estimate that 790 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about one work hour per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the proposed AD to perform one inspection to U.S. operators to be $51,350.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

General Electric Company: Docket No. FAA–2004–19463; Directorate Identifier 2004–NE–14–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 27, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines that have not incorporated GE Service Bulletin (SB) No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or that have not incorporated paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003. These engines are installed on, but not limited to, Boeing DC10 and 747 series airplanes, and Airbus Industrie A300 series airplanes.

Unsafe Condition

(d) This AD results from a report of a stud that separated from a turbine mid frame (TMF) strut and from an updated analysis of strut stud failures. We are issuing this AD to prevent an uncontained failure of the engine and possible damage to the airplane caused by failure of TMF strut studs.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Inspection

(f) Borescope-inspect the low pressure turbine (LPT) stage 1 blades within 3,000 cycles-since-new (CSN), or 3,000 cycles-since-replacement of the TMF strut studs, or 150 cycles-in-service (CIS) after the effective date of this AD, whichever occurs later. Use paragraph 3.A.(2) of the Accomplishment Instructions of GE Alert Service Bulletin (ASB) No. CF6–50 S/B 72–A1251, dated September 24, 2003, to do the inspection.

(g) Replace any LPT module that has stage 1 LPT blade damage exceeding aircraft maintenance manual limits.

Repetitive Inspections

(h) Borescope-inspect the LPT stage 1 blades within intervals of 500 cycles-since-

last-inspection or within 500 cycles-since-last shop visit, or within 150 CIS after the effective date of this AD, whichever occurs later. Use paragraph 3.A.(3) of the Accomplishment Instructions of GE ASB No. CF6–50 S/B 72–A1251, dated September 24, 2003 to do the inspections.

(i) Replace any LPT module that has stage 1 LPT blade damage exceeding aircraft maintenance manual limits.

Optional Terminating Action

(j) Engines incorporating GE SB No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or incorporating paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003, ends the repetitive inspection requirements in paragraph (h) of this AD.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(l) None.

Issued in Burlington, Massachusetts, on October 21, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–24035 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19447; Directorate Identifier 2004–NM–97–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposed AD would require a one-time inspection to determine the part and serial numbers of certain molded assembly engine mounts (isolators) and the cure dates of certain bonded canister assemblies incorporated in those engine mounts; and related corrective actions if necessary. This proposed AD is prompted by a report that disbonding of the elastomer from the inner metal core and shim of certain molded assembly engine mounts has occurred within a few hundred hours of operation, causing heavy chafing of the engine support system and chafing of the fire sensor loop. We are proposing this AD to prevent reduced integrity of the fire-shielding capacity of the nacelle structure and a possible fire detector fault.

DATES: We must receive comments on this proposed AD by November 26, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

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

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19447; Directorate Identifier 2004–NM–97–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden,

notified us that an unsafe condition may exist on all Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that disbonding of the elastomer from the inner metal core and shim of the bonded canister assemblies incorporated in certain molded assembly engine mounts (isolators) has occurred within a few hundred hours of operation. This disbonding could reduce the redundancy and change the stiffness and damping characteristics of the engine support system, cause heavy chafing of the nacelle structure, and cause chafing of the fire sensor loop. This condition, if not corrected, could result in reduced integrity of the fire-shielding capacity of the nacelle structure and a possible fire detector fault.

Relevant Service Information

Saab has issued Saab Service Bulletin 340–71–059, dated May 16, 2003. The service bulletin describes procedures for a one-time inspection to determine the part and serial numbers of certain molded assembly engine mounts (isolators) and the cure dates of certain bonded canister assemblies incorporated in those engine mounts; an inspection for chafing of the nacelle structure of all airplanes and for chafing of the fire sensor loop of certain airplanes; and related corrective actions if necessary. Corrective actions include replacement of the engine mounts and repair or replacement of chafed nacelle structure and fire sensor loop components. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The LFV mandated the service information and issued Swedish airworthiness directive SAD 1–192, dated May 16, 2003, to ensure the continued airworthiness of these airplanes in Sweden.

Service Bulletin 340–71–059 refers to Barry Controls Service Letter 93948–71–05, dated April 30, 2003, as an additional source of service information for determining the part numbers and serial numbers of certain molded assembly engine mounts, and the cure dates of the bonded canister assemblies incorporated in those engine mounts.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. We have examined the LFV's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require a one-time inspection to determine the part and serial numbers of certain molded assembly engine mounts (isolators) and the cure dates of the bonded canister assemblies incorporated in those engine mounts; a general visual inspection for chafing of certain elements adjacent to those engine mounts; and related corrective actions if necessary. The proposed AD would require you to use Saab Service Bulletin 340–71–059 described previously to perform these actions, except as discussed under ''Clarification of Inspection Terminology.''

Clarification of Inspection Terminology

Saab Service Bulletin 340–71–059 specifies an inspection for chafing of certain elements adjacent to certain molded assembly engine mounts. To eliminate any confusion about this inspection, this proposed AD would require a general visual inspection of those elements. Note 2 of this proposed AD includes a definition of this type of inspection.

Costs of Compliance

This proposed AD would affect about 170 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this proposed AD for U.S. operators is $22,100 or $130 per airplane.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

SAAB Aircraft AB: Docket No. FAA–2004–19447; Directorate Identifier 2004–NM–97-AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by November 26, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model SAAB SF340A and SAAB 340B series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that disbonding of the elastomer from the inner metal core and shim of certain molded assembly engine mounts (isolators) has occurred within a few hundred hours of operation, causing heavy chafing of the engine support system and chafing of the fire sensor loop. We are issuing this AD to prevent reduced integrity of the fire-shielding capacity of the engine nacelle structure and a possible fire detector fault.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(f) Within 500 flight hours after the effective date of this AD, perform a one-time inspection to determine the part and serial numbers of certain molded assembly engine mounts (isolators) and the cure dates of certain bonded canister assemblies incorporated in those engine mounts; and a general visual inspection for chafing of the

nacelle structure and fire sensor loop; and related corrective actions, as applicable; in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–71–059, dated May 16, 2003. Corrective actions must be accomplished prior to further flight.

Note 1: Saab Service Bulletin 340–71–059 refers to Barry Controls Service Letter 93948–71–05, dated April 30, 2003, as an additional source of service information.

Note 2: For the purposes of this AD, a general visual inspection is ''a visual examination of a interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or droplight and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) Swedish airworthiness directive SAD 1–192, dated May 16, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24034 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19451; Directorate Identifier 2002–NM–138–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); and A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes. The existing AD currently requires identification of the part number and serial number of the parking brake operated valve (PBOV); and, if necessary, inspections of the PBOV, including a functional check of the PBOV, and follow-on and corrective actions. The existing AD also provides for optional terminating action for the requirements of that AD. This proposed AD would require modification of all affected PBOVs, or replacement with new, nonaffected PBOVs, which would terminate the requirements of the existing AD. This proposed AD is prompted by a decision by the FAA and a civil airworthiness authority to require modification or replacement of all affected PBOVs. We are proposing this AD to prevent loss of the yellow hydraulic system, which provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron.

DATES: We must receive comments on this proposed AD by November 26, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

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

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19451; Directorate Identifier 2002–NM–138–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at

http://www.faa.gov/language and *http://www.plainlanguage.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On April 12, 2002, we issued AD 2002–08–14, amendment 39–12722 (67 FR 19655, April 23, 2002), for all Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes. That AD requires identification of the part number and serial number of the parking brake operated valve (PBOV); and, if necessary, inspections of the PBOV, including a functional check of the PBOV, and follow-on and corrective actions. That AD also provides for optional terminating action for the requirements of that AD. That AD was prompted by issuance of mandatory continuing airworthiness information by the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France. We issued that AD to prevent loss of the yellow hydraulic system, which provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron.

Actions Since Existing AD Was Issued

The preamble to AD 2002–08–14 indicated that the FAA and the DGAC were considering a requirement to replace all affected PBOVs. We and the DGAC have determined that modification or replacement of all affected PBOVs should be required, and this proposed AD follows from that determination. The parallel French airworthiness directive is 2001–510(B) R1, dated May 15, 2002.

FAA's Determination and Requirements of the Proposed AD

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

This proposed AD would supersede AD 2002–08–14. This proposed AD would retain certain requirements of the existing AD. This proposed AD would also require modification of all affected PBOVs, or replacement with new, nonaffected PBOVs, which would terminate the requirements of the existing AD. Accomplishment of the modification or replacement would be required in accordance with the service bulletins referenced in AD 2002–08–14 (Airbus Service Bulletins A300–32A0441, A300–32A6087, or A310–32A2124; all dated September 10, 2001; as applicable).

Change to Existing AD

This proposed AD would retain certain requirements of AD 2002–08–14. Since AD 2002–08–14 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2002–08–14	Corresponding equirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).
paragraph (d)	paragraph (h).

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD. This proposed AD would affect about 168 airplanes of U.S. registry.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane
Inspection of PBOV part number/serial number (required by AD 2002–08–14).	2	65	None	$130
Modification/replacement (new proposed action)	4	65	No Charge	260

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–12722 (67 FR 19655, April 23, 2002) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–19451; Directorate Identifier 2002–NM–138–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by November 26, 2004.

Affected ADs

(b) This AD supersedes AD 2002–08–14, amendment 39–12722 (67 FR 19655, April 23, 2002).

Applicability: (c) This AD applies to all Airbus Model A300 B2 and B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); and A310 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a decision by the FAA and a civil airworthiness authority to require modification or replacement of all affected parking brake operated valves (PBOV). We are issuing this AD to prevent loss of the yellow hydraulic system, which provides all the hydraulics for certain spoilers; elements of the hydraulics for flaps, stabilizer, pitch and yaw feel systems, pitch and yaw autopilot, and yaw damper; and elevator, rudder, and aileron.

Compliance: (e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Certain Requirements of AD 2002–08–14

Inspection and Functional Check

(f) Within 7 days after May 8, 2002 (the effective date of AD 2002–08–14, amendment 39–12722), identify the part and serial number of the PBOV to determine whether the PBOV is an affected part, as identified by Airbus Service Bulletin A300–32A0441 (for Model A300 B2 and B4 series airplanes), A300–32A6087 (for Model A300–600 series airplanes), or A310–32A2124 (for Model A310 series airplanes), all dated September 10, 2001; as applicable.

(1) If the PBOV is NOT an affected part, no further action is required by this AD.

(2) If the PBOV is an affected part: Except as required by paragraph (g) of this AD, prior to further flight, test the PBOV in accordance with the applicable service bulletin; and thereafter perform follow-on and corrective actions (including repetitive tests and repair of the PBOV or replacement with a serviceable PBOV) at the time specified by and in accordance with the service bulletin, as applicable.

(g) If the applicable service bulletin identified in paragraph (f) of this AD specifies to contact ''SEE32'' for corrective action: Prior to further flight, perform the corrective action in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent).

Parts Installation

(h) As of May 8, 2002 (the effective date of AD 2002–08–14) no person may install an affected PBOV on any airplane, unless that PBOV is in compliance with all applicable requirements of this AD. Affected PBOVs are identified by Airbus Service Bulletin A300–32A0441 (for Model A300 B2 and B4 series airplanes), A300–32A6087 (for Model A300–600 series airplanes), or A310–32A2124 (for Model A310 series airplanes), all dated September 10, 2001; as applicable.

New Requirements of This AD

PBOV Modification/Replacement

(i) Within 7 months after the effective date of this AD: Modify all affected PBOVs, or replace them with new PBOVs, in accordance with Airbus Service Bulletin A300–32A0441 (for Model A300 B2 and B4 series airplanes), A300–32A6087 (for Model A300–600 series airplanes), or A310–32A2124 (for Model A310 series airplanes), all dated September 10, 2001; as applicable. The modification or replacement of all affected PBOVs terminates the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(k) French airworthiness directive 2001–510(B) R1, dated May 15, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24033 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19449; Directorate Identifier 2004–NM–07–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes Equipped With Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–11 and MD–11F airplanes equipped with Pratt & Whitney PW4000 series engines. This proposed AD would require, for each engine, replacing, with a tube assembly, the existing hose assembly that connects the oil pressure transmitter to the main oil circuit. This proposed AD is prompted by a report indicating that, for each engine, the existing hose assembly does not meet zero-flow fireproof capability requirements. We are proposing this AD to prevent, if there is an engine fire, failure of the oil pressure indicator and the low-oil pressure warning, which could result in an unannounced shutdown of that engine; and oil leakage, which may feed the engine fire.

DATES: We must receive comments on this proposed AD by December 13, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical information: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19449; Directorate Identifier 2004–NM–07–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that, on certain McDonnell Douglas Model MD–11 and MD–11F airplanes, the hose assembly that connects the oil pressure transmitter to the main oil circuit on Pratt & Whitney PW4000 series engines does not meet zero-flow fireproof capability requirements. An oil line in this location should have zero-flow fireproofing, but the existing hose assembly provides only low-flow fireproofing. Low-flow fireproofing, if not corrected, could result in failure of the oil pressure indicator and the low-oil pressure warning if there is an engine fire, which could result in an unannounced shutdown of that engine; and oil leakage, which may feed the engine fire.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD11–79A008, dated December 11, 2001. The service bulletin describes procedures for replacing the existing hose assemblies that connect the oil pressure transmitters to the main oil circuit, with tube assemblies. The service bulletin also describes procedures for testing the engine oil system after the replacement. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The service bulletin refers to Pratt & Whitney Alert Service Bulletin PW4MD11 A79–9, dated October 25, 2001, as an additional source of service information for replacing the hose assemblies.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require, for each engine, replacing the existing hose assembly that connects the oil pressure transmitter to the main oil circuit, with a tube assembly. The proposed AD would require you to use the Boeing service information described previously to perform these actions.

Costs of Compliance

This proposed AD would affect about 76 airplanes worldwide, and 34 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S. registered airplanes	Fleet cost
Replacement	2	$65	No charge	$130	34	$4,420

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES**

section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2004–19449; Directorate Identifier 2004–NM–07–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by December 13, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–11 and MD–11F airplanes, as listed in Boeing Alert Service Bulletin MD11–79A008, dated December 11, 2001; certificated in any category; equipped with Pratt & Whitney PW4000 series engines.

Unsafe Condition

(d) This AD was prompted by a report indicating that, for each engine, the existing hose assembly that connects the oil pressure transmitter to the main oil circuit does not meet zero-flow fireproof capability requirements. We are proposing this AD to prevent, if there is an engine fire, failure of the oil pressure indicator and the low-oil pressure warning, which could result in an unannounced shutdown of that engine; and oil leakage, which may feed the engine fire.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacement of Hose Assemblies

(f) Within 18 months after the effective date of this AD: For each engine, replace the existing hose assembly, part number (P/N) 113286, that connects the oil pressure transmitter to the main oil circuit, with tube assembly P/N 221–5318–501. Do the replacement in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–79A008, dated December 11, 2001.

Note 1: Boeing Alert Service Bulletin MD11–79A008 refers to Pratt & Whitney Alert Service Bulletin PW4MD11 A79–9, dated October 25, 2001, as an additional source of service information for replacing the hose assemblies.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24032 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150562–03]

RIN 1545–BC67

Section 1045 Application to Partnerships; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on a notice of proposed rulemaking that relates to partnership and their partners. The notice of public hearing under section 1045 of the Internal Revenue Code appeared in the **Federal Register** on Thursday, July 15, 2004, (69 FR 42370). The change in date of the public hearing and extension of time to submit outlines of oral comments appeared in the **Federal Register** on Thursday, September 2, 2004, (69 FR 53664).

DATES: The public hearing originally scheduled for November 2, 2004, at 10 a.m., changed to November 9, 2004, at 10 a.m., has been cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration), at (202) 622–4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Thursday, July 15, 2004, (69 FR 42370), announced that a public hearing was scheduled for November 2, 2004, at 10 a.m., in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 1045 of the Internal Revenue Code. However, a change in date of public hearing; extension of time to submit outlines of oral comments notice that appeared in the **Federal Register** on September 2, 2004, (69 FR 53664), announced that a public hearing was scheduled for November 9, 2004, at 10 a.m., in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public comment period for these regulations expired on October 19, 2004. The notice of proposed rulemaking instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, October 22, 2004, no one has requested to speak. Therefore, the public hearing scheduled for November 9, 2004, is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 04–24054 Filed 10–26–04; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 25

[REG–163679–02]

RIN 1545–BB72

Qualified Interest; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed rulemaking relating to the gift tax special valuation rules.

DATES: The public hearing originally scheduled for Thursday, October 28, 2004, at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor, Procedures and Administration, Publications & Regulations Branch, at (202) 622–3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, July 26,

2004 (69 FR 44476), announced that a public hearing was scheduled for October 28, 2004 at 10 a.m., in the auditorium of the Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 2702 of the Internal Revenue Code. The public comment period for these proposed regulations expired on October 25, 2004.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of topics to be addressed by October 7, 2004. As of October 25, 2004, no one has requested to speak. Therefore, the public hearing scheduled for October 28, 2004 is cancelled.

Guy R. Traynor,

Federal Register Liaison, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures & Administration).

[FR Doc. 04–24129 Filed 10–25–04; 2:01 pm]

BILLING CODE 4830–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2700, 2701, 2702, and 2704

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Federal Mine Safety and Health Review Commission (the ''Commission'') is seeking suggestions regarding changes to improve its procedural rules (29 CFR part 2700), Government in the Sunshine Act regulations (29 CFR part 2701), regulations implementing the Freedom of Information Act (29 CFR part 2702), and regulations implementing the Equal Access to Justice Act (29 CFR part 2704).

DATES: Written and electronic comments must be submitted on or before January 25, 2005.

ADDRESSES: Written comments should be mailed to Thomas Stock, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001. Persons submitting written comments shall provide an original and three copies of their comments. Electronic comments should state ''Comments on Advanced Notice of Proposed Rulemaking'' in the subject line and be sent to *tstock@fmshrc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Stock, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, telephone 202–434–9935; FAX: 202–434–9944.

SUPPLEMENTARY INFORMATION: The Commission is reviewing its rules set forth in 29 CFR parts 2700, 2701, 2702, and 2704 to determine if revisions would aid the efficient adjudication of proceedings before the Commission and its judges. In particular, the Commission is considering revisions to its procedural rules set forth in part 2700. Since it last significantly revised its procedural rules in March 1993, the Commission has identified several rules that require further revision, clarification, or expansion. Revisions to part 2700 that the Commission is considering are described in the following text. The Commission will also examine its procedures for processing requests for relief from final judgment. The Commission requests comments from members of the interested public regarding the procedural rule revisions for consideration described in this notice. The Commission also invites submission of other revisions to the procedural rules (part 2700) not described in this notice that will lead to the more efficient adjudication of cases.

While no specific revisions to the Commission's regulations implementing the Government in Sunshine Act (part 2701), the Freedom of Information Act (part 2702), and the Equal Access to Justice Act (part 2704) are set forth in this notice, the Commission encourages members of the interested public to comment on any revisions or additions to those regulations.

Subpart A—General Provisions

29 CFR 2700.5(d) and 29 CFR 2700.7(c)

Commission Procedural Rule 5(d) currently provides that a notice of contest of a citation or order; a petition for assessment of penalty; a complaint for compensation; a complaint of discharge, discrimination or interference; an application for temporary reinstatement; and an application for temporary relief shall be filed by personal delivery or by registered or certified mail, return receipt requested. 29 CFR 2700.5(d). Commission Procedural Rule 7(c) also requires that such documents, in addition to a proposed penalty assessment, shall be served by personal delivery or by registered or certified mail, return receipt requested. 29 CFR 2700.7(c); *see also* 29 CFR 2700.45(a) (providing in part for service by certified mail of pleadings in a temporary reinstatement proceeding). Although not explicitly required by the Commission's procedural rules in all circumstances (*cf.* 29 CFR 2700.66(a) (requiring show cause orders to be mailed by registered or certified mail, return receipt requested)), the Commission as a matter of practice generally mails by certified mail, return receipt requested, a judge's decision after hearing, default orders, and orders that require timely action by a party.

The Commission is reviewing the use of certified mail for parties' filings and documents issued by the Commission. On one hand, certified mail can be costly and time-consuming. On the other hand, the return receipt associated with certified mail provides reliable information regarding the service of documents. The Commission will balance these competing factors in considering whether mailing by certified mail is appropriate. The Commission is also reviewing forms of mailing and delivery that might be an acceptable substitute for certified mail.

In addition, Commission Procedural Rule 5(d) provides that certain documents, including petitions for discretionary review, may be filed by facsimile transmission. 29 CFR 2700.5(d). The Commission is reviewing whether notices designating a petition for discretionary review as an opening brief may also be filed by facsimile transmission.

29 CFR 2700.5(e)

Commission Procedural Rule 5(e) currently sets forth the number of copies to be submitted in cases before a judge and the Commission. 29 CFR 2700.5(e). Experience has indicated that not all judges require the number of copies required by the rule but, rather, that one copy should suffice. The Commission is considering requiring fewer copies than are currently required by the rule.

29 CFR 2700.8

Commission Procedural Rule 8 provides in part that the last day of a period computed shall be included unless that day is a Saturday, Sunday, or Federal holiday, in which event the period runs until the next business day. 29 CFR 2700.8. The rule further provides that when a period of time prescribed in the rules is less than seven days, intermediate Saturdays, Sundays, and Federal holidays shall be excluded in the computation of time. *Id.* Rule 8 also states that when the service of a document is by mail, 5 days shall be

added to the time allowed by the rules for the filing of a response or other documents. *Id.*

The Commission is considering whether to more closely conform its computation-of-time rule with the Federal rules. For instance, Federal rules provide that when a period of time prescribed is less than *eleven* days, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation. Fed. R. Civ. P. 6(a); Fed. R. App. Proc. 26(a)(2). Fed. R. Civ. P. 6(e) further provides in part that *three* days are added to any period whenever the party required to act is served by mail. Fed. R. Civ. P. 6(e). In light of the Federal rules, the Commission is considering whether it should increase the period for which intervening Saturdays, Sundays and legal holidays shall be excluded, and decrease the number of days added for filing a response if service is by mail.

The Commission is also considering clarifying changes to Commission Procedural Rule 8 that would dispel confusion regarding the circumstances and the types of mail and delivery that qualify for the additional days for filing when service is by mail. In addition, the Commission is considering making explicit that if the 40th day following a judge's decision falls on a Saturday, Sunday, or Federal holiday, the Commission may act on the petition for discretionary review of the judge's decision until the close of the next business day. If the Commission does not grant that petition for discretionary review, the petition would be deemed denied and the judge's decision would be deemed final at the close of that business day.

29 CFR 2700.10(c)

Commission Procedural Rule 10(c) currently provides that prior to filing a ''procedural motion,'' the moving party shall make reasonable efforts to confer with other parties and state in the motion if the other parties oppose the motion. 29 CFR 2700.10(c).

The Commission is considering whether the phrase ''procedural motion'' should be changed to clarify that it refers to a non-dispositive motion.

Subpart B (Contests of Citations and Orders); Subpart C (Contests of Proposed Penalties); and Subpart D (Complaints for Compensation)

Subparts B and C

The Commission has dual filing requirements under subparts B and C that reflect the filing procedures set forth in sections 105(a) and (d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(a) and (d) (2000). Subpart B sets forth the manner in which a party may contest a citation or order before the Secretary has proposed a civil penalty for the alleged violation described in the citation or order. Subpart C sets forth the manner in which a party may contest a civil penalty after a proposed penalty assessment has been issued. If a party chooses not to file a contest of a citation or order under subpart B, it may nonetheless contest the proposed penalty assessment under subpart C. In such circumstances, in addition to contesting the proposed penalty assessment, the party may challenge the fact of violation and any special findings alleged in the citation or order. *See* 29 CFR 2700.21 (''An operator's failure to file a notice of contest of a citation or order * * * shall not preclude the operator from challenging, in a penalty proceeding, the fact of violation or any special findings * * *''); *Quinland Coals Inc.,* 9 FMSHRC 1614, 1621 (Sept. 1987) (holding that fact of violation and special findings may be placed in issue by the operator in a civil penalty proceeding regardless of whether the operator has availed itself of the opportunity to file a contest proceeding). However, if a party files a contest of a citation or order under subpart B, it must also file additional pleadings under subpart C in order to challenge the proposed penalty assessment related to the citation or order.

The dual filing requirements are not consistent, leading to confusion. Experience has shown that a party may fail to contest a proposed penalty assessment or to answer the Secretary's petition for assessment of penalty under subpart C based on the mistaken belief that it is relieved of those obligations by filing a notice of a contest of a citation or order under subpart B.

The Commission is considering whether the filing requirements relating to contesting citations, orders, and proposed penalties may be streamlined while remaining consistent with the procedures set forth in sections 105(a) and (d) of the Mine Act. For instance, the Commission is considering adding a provision that would state that, by filing a notice of contest of a citation or order, the party would be deemed to also contest any subsequent proposed penalty assessment. Alternatively, the Commission could simply clarify in its rules that the filing of a notice of contest of a citation or order under subpart B does not relieve the party of the obligation to contest a proposed penalty assessment or answer the Secretary's petition for assessment of penalty under subpart C.

29 CFR 2700.44(a) and 29 CFR 2700.28(b)

Commission Procedural Rule 44(a), which pertains to a petition for the assessment of a penalty for an alleged violation of section 105(c) of the Mine Act, 30 U.S.C. 815(c), currently provides that ''[t]he petition for assessment of penalty shall include a short and plain statement of supporting reasons based on the criteria for penalty assessment set forth in section 110(i) of the Act.'' 29 CFR 2700.44(a), *citing* 30 U.S.C. 820(i). Commission Procedural Rule 44(a) was promulgated to codify the Commission's holding in *Secretary of Labor on behalf of Bailey* v. *Arkansas-Carbona Co.,* 5 FMSHRC 2042, 2044–48 (Dec. 1983), that the Secretary is required to set forth in a discrimination complaint the amount of the penalty supported by information on the six criteria set forth in section 110(i) of the Mine Act.

Procedural Rule 28, which sets forth the procedure for the Secretary to file a petition for assessment of penalty when an operator has contested a proposed penalty in other (non-discrimination) cases, does not include the ''short and plain statement'' requirement of Rule 44(a). Rather, Rule 28 provides merely that the petition for assessment of penalty shall state whether the citation or order has been contested and the docket number of any contest, and that the party against whom a penalty is filed has 30 days to answer the petition. 29 CFR 2700.28(b).

The Commission is considering whether the provisions of Commission Procedural Rules 44(a) and 28(b) should be made consistent by adding to Rule 28(b) the short and plain statement requirement of Rule 44(a) so as to provide notice of the basis for a penalty to the party against whom the penalty is filed.

Subpart E—Complaints of Discharge, Discrimination or Interference

29 CFR 2700.45

Commission Procedural Rule 45 sets forth the procedure for proceedings involving the temporary reinstatement of a miner alleging discrimination under section 105(c) of the Mine Act, 30 U.S.C. 815(c). Currently, as to a judge's jurisdiction, Commission Procedural Rule 45 states only that a judge shall dissolve an order of temporary reinstatement if the Secretary of Labor's investigation reveals that the provisions of section 105(c)(1) of the Mine Act have not been violated. 29 CFR 2700.45(g).

The Commission is considering whether to revise Rule 45 to set forth the Commission's holding in *Secretary of Labor on behalf of York* v. *BR&D Enterprises, Inc.,* 23 FMSHRC 386, 388–89 (Apr. 2001), that a Commission administrative law judge retains jurisdiction over a temporary reinstatement proceeding pending issuance of a final Commission order on the underlying complaint of discrimination.

Subpart G—Hearings

29 CFR 2700.54

Commission Procedural Rule 54 currently provides in part that written notice of the time, place, and nature of a hearing shall be given to all parties at least 20 days before the date set for hearing. 29 CFR 2700.54. The Commission is considering whether the rule should be revised to require an administrative law judge to consult with all parties before setting a date for hearing.

29 CFR 2700.56(d) and (e)

Commission Procedural Rule 56(d) sets forth a time for initiating discovery, providing in part that ''[d]iscovery shall be initiated within 20 days after an answer to a notice of contest, an answer to a petition for assessment of penalty, or an answer to a complaint under section[s] 105(c) or 111 of the Act has been filed.'' 29 CFR 2700.56(d), *citing* 30 U.S.C. 815(c) and 821. Commission Procedural Rule 56(e) sets forth a time for completing discovery, providing that ''[d]iscovery shall be completed within 40 days after its initiation.'' 29 CFR 2700.56(e).

Experience under the rule has indicated that the time-frames given in the Commission's procedural rules for initiating and completing discovery may be too restrictive. Particularly, the Commission is considering whether there should be no specific time-frame for initiating discovery, and whether 40 days is too short a period of time for the completion of discovery. The Commission is considering whether it should replace those time-frames with a provision that discovery should not delay or otherwise impede disposition of the case and that, in any event, discovery should be completed at least 30 days prior to the date of the scheduled hearing.

29 CFR 2700.67

Commission Procedural Rule 67(a) currently provides that ''[a]t any time after commencement of a proceeding and no later than 10 days before the date fixed for the hearing on the merits, a party may move the Judge to render summary decision disposing of all or part of the proceeding.'' 29 CFR 2700.67(a).

The Commission is considering whether the filing deadline for a summary decision motion should be changed from ten days to 20 or 30 days before the hearing, allowing the judge a greater period of time to rule on the motion.

29 CFR 2700.69

Commission Procedural Rule 69(c) sets forth the procedure for the correction of clerical errors in a judge's decision. 29 CFR 2700.69(c). It provides that, at any time before the Commission has directed review of a judge's decision, a judge may correct clerical errors on his/her own motion, or on the motion of a party. *Id.* After the Commission has directed review of the judge's decision or after the judge's decision has become the final order of the Commission, the judge may correct clerical errors with the leave of the Commission. *Id.*

The Commission is considering inserting a provision which would make explicit that clerical corrections made subsequent to the issuance of a judge's decision do not toll the period for filing a petition for discretionary review of the judge's decision on the merits. *See Begley, employed by Manalapan Mining Co.,* 22 FMSHRC 943, 944 (Aug. 2000).

Subpart H—Review by the Commission

29 CFR 2700.70(h)

Commission Procedural Rule 70(h) currently provides that a petition for discretionary review that is not granted within 40 days after the issuance of an administrative law judge's decision is deemed denied. 29 CFR 2700.70(h).

The Commission is considering making explicit its present practice under the rule that, if the 40th day after a judge's decision falls on a Saturday, Sunday, or Federal holiday, the Commission may act on a petition for discretionary review of the judge's decision until the close of the next business day following the 40th day. If the Commission does not grant the petition for discretionary review, the petition would be deemed denied, and the judge's decision would be deemed final at the close of that business day.

29 CFR 2700.72

Commission Procedural Rule 72 currently provides that an unreviewed decision of a judge is not a precedent binding upon the Commission. 29 CFR 2700.72.

The Commission believes that any citation in a pleading to an unreviewed decision of a judge should be designated parenthetically as such. Such a revision would provide the reader with information regarding whether the citation is binding precedent on the proposition for which it is cited.

29 CFR 2700.76

Commission Procedural Rule 76 currently sets forth the procedure for interlocutory review by the Commission. 29 CFR 2700.76. While the rule specifies that the Commission's review is confined to the issues raised in the judge's certification or to the issues raised in the petition for interlocutory review (29 CFR 2700.76 (d)), there is no description of what constitutes the record on interlocutory review.

The Commission is considering whether it should revise Commission Procedural Rule 76 to state what constitutes the record on interlocutory review.

29 CFR 2700.78

Commission Procedural Rule 78(b) currently provides in part that, unless the Commission orders otherwise, the filing of a petition for reconsideration does not stay the effect of a Commission decision and does not affect the finality of a decision for purposes of review in the courts. 29 CFR 2700.78(b).

The Commission is considering whether it should revise Commission Procedural Rule 78 to state that the filing of a petition for reconsideration tolls the time period for filing an appeal for judicial review until the Commission has issued an order disposing of the petition for reconsideration.

29 CFR 2700.80

The Commission is considering revising Rule 80(a) to clarify that certain ethical conduct is required of individuals practicing before the Commission or its judges.

Miscellaneous

Electronic Filing

The Commission is considering the feasibility of electronic filing and may consider initiating a program that would permit the electronic filing of limited categories of documents in proceedings on a voluntary basis.

Public Review of Comments

All comments responding to this notice will be a matter of public record and available for public inspection and copying by appointment with Ella Waymer, between the hours of 9 a.m. and 5 p.m. on business days at the Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue,

NW., 9th Floor, Room 9536, Washington DC 20001; telephone 202-434–9935.

Michael F. Duffy,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 04–24023 Filed 10–26–04; 8:45 am]

BILLING CODE 6735–01–P

POSTAL SERVICE

39 CFR Part 111

Use of Ancillary Service Endorsement for Mailing Certain Types of Checks

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Domestic Mail Manual (DMM) to require an endorsement requesting forwarding or return on certain mailpieces containing checks sent at Standard Mail postage rates, including ''convenience'' and ''balance transfer'' checks.

DATES: Written comments must be received on or before November 26, 2004.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mailing Standards, United States Postal Service, 475 L'Enfant Plaza, SW., Rm 3436, Washington DC 20260–3436. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington DC, between 9 a.m. and 4 p.m., Monday through Friday. Comments may not be submitted via fax or e-mail.

FOR FURTHER INFORMATION CONTACT: William Chatfield, Mailing Standards, United States Postal Service, 202–268–7278.

SUPPLEMENTARY INFORMATION: The Postal Service has observed an increased amount of mail containing checks, including ''convenience'' and ''balance transfer'' checks. For instance, a common marketing tool is to include convenience checks with credit card-related mailings to encourage addressees to complete a check for cash, with the amount added to the credit card balance. Financial institutions also are using balance transfer checks to encourage addressees to transfer balances from competitor credit cards to the mailer's credit card. In many cases, these mailpieces are not requested by the addressee. In addition, other checks are sent through the mail. For example, check vendors and producers mail new books of blank checks to fulfill orders from their customers.

The secure carriage of our customers' correspondence is a paramount consideration for the Postal Service. This consideration is particularly important when we are entrusted with mailings containing checks. The security of mailpieces containing checks is enhanced by ensuring that they are, if undeliverable as addressed, either forwarded to the addressee's new address or returned to the sender.

Mail entered as First-Class Mail receives forwarding and return service if undeliverable as originally addressed. Many mailings that contain checks are required, due to the nature of their contents, to be entered as First-Class Mail. Other mailings that contain checks, even though eligible for Standard Mail rates, are entered as First-Class Mail, which expedites handling and ensures the forwarding or return of undeliverable pieces. However, some mailings that contain checks eligible for Standard Mail rates are mailed at those rates.

Under the proposal, certain checks not required to be entered as First-Class Mail may be sent as Standard Mail only if the mailpiece bears an ancillary service endorsement resulting in the forwarding or return of undeliverable mailpieces. The use of such endorsements is a low-cost solution for mailers, particularly those who maintain updated address lists, since these endorsements require the payment of fees or additional postage only for mail that is undeliverable as addressed.

Endorsements satisfying the proposed standard would include ''Return Service Requested,'' ''Address Service Requested,'' and ''Forwarding Service Requested'' or, for authorized users of bulk parcel return service, ''Return Service Requested—BPRS'' or ''Address Service Requested—BPRS.'' Mailpieces required to bear one of these endorsements would be those with checks drawn on an account of a party other than the mailer or mailer's agent, whether or not the checks are blank. An endorsement would not be required on mailpieces containing rebate, refund, and similar checks that are drawn on the mailer's account, whether or not they are mailed as Standard Mail.

Implementation Schedule

If the proposal is adopted, the Postal Service intends to defer implementation until June 1, 2005. This delayed implementation date would give customers adequate time to budget and plan for future mailings.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b),(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations (CFR). *See* 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

E Eligibility

* * * * *

E600 Standard Mail

E610 Basic Standards

* * * * *

2.0 CONTENT

* * * * *

[Add new 2.4 to read as follows:]

2.4 Checks

Checks that are drawn (or intended to be drawn) on an account of a party other than the mailer or mailer's agent and that are not required to be entered as First-Class Mail may be sent as Standard Mail only when the envelope or container bears one of the following ancillary service endorsements: ''Return Service Requested,'' ''Address Service Requested,'' or ''Forwarding Service Requested.'' Mailers authorized to use bulk parcel return service to mail Standard Mail machinable parcels must use the endorsement ''Return Service Requested—BPRS'' or ''Address Service Requested—BPRS.'' These provisions apply to all mailpieces containing such checks, whether blank or with some or all of the fields completed.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–23647 Filed 10–26–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA203–4218b; FRL–7821–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Requirements for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) related requirements to limit volatile organic compounds (VOC) and nitrogen oxides (NO_X) from two major sources. In the Final Rules section of the **Federal Register,** EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 26, 2004.

ADDRESSES: Submit your comments, identified by PA203–4218 by one of the following methods:

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

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

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

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

Instructions: Direct your comments to Docket ID No. PA203–4218. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168 or via e-mail at *harris.betty@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval of Pennsylvania's VOC and NO_X RACT Requirements for Tennessee Gas Pipeline Company, Station 321, Susquehanna County, Pennsylvania (OP–58–0001A) and Tennessee Gas Pipeline Company, Station 219, Mercer County, Pennsylvania (OP–43–0272), that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 22, 2004.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 04–23944 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD170–3113b; FRL–7819–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland, Control of VOC Emissions From Yeast Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. The SIP revision pertains to the amendments of a regulation that controls VOC emissions from yeast manufacturing facilities. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 26, 2004.

ADDRESSES: Submit your comments, identified by MD170–3113 by one of the following methods:

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

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

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode

3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. MD170–3113. 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.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action for the approval of the control of VOC emissions from yeast manufacturing facilities in Maryland, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 20, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 04–23949 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2004–WV–0001; FRL–7821–5]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Determination of Attainment and Redesignation of the City of Weirton PM_{10} Nonattainment Area to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is determining that the City of Weirton PM_{10} nonattainment area (the Weirton area) has attained the National Ambient Air Quality Standard (NAAQS) for PM_{10}. EPA proposes to approve the West Virginia Department of Environmental Protection's (WVDEP) request to redesignate the Weirton area to attainment of the NAAQS for PM_{10}. In conjunction with its approval of this redesignation request, EPA is also proposing to approve WVDEP's 10-year maintenance plan for the Weirton area as a revision to the West Virginia State Implementation Plan (SIP). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 26, 2004.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–WV–0001 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

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

D. Mail: R03–OAR–2004–WV–0001, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to RME ID No. R03–OAR–2004–WV–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.docket.epa.gov/rmepub/,* 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are 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 RME 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068 , or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information on the approval of West Virginia's redesignation request and maintenance plan for the Weirton PM_{10} nonattainment area , please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 20, 2004.

Thomas C. Voltaggio,

Acting Deputy Regional Administrator, Region III.

[FR Doc. 04–23946 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 207
Wednesday, October 27, 2004

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

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Southwest Oregon Provincial Advisory Committee

SUMMARY: The Southwest Oregon Provincial Advisory Committee will meet on Tuesday, November 16, 2004, for (1) a review of the Mt Ashland Forest Resiliency Project field trip; (2) a presentation on Water for Irrigation, Streams and Economy; (3) an update on the Northern Spotted Owl 5-year review; (4) a report on the Northwest Forest Plan and the Southwest Oregon Implementation Monitoring Report; and (5) an update from National Fire Plan and Cascade-Siskiyou National Monument Livestock study work groups. The meeting will be held at the Ashland Springs Hotel, 212 E. Main Street, Ashland, OR 97520. It begins at 9 a.m., ends 3:15 p.m., and the open public forum begins at 11:30 a.m. with a 4-minute limitation per individual presentation. Written comments may be submitted prior to the meeting and delivered to Designated Federal Official, Scott Conroy at the Rogue River-Siskiyou National Forest, PO Box 520, Medford, OR 97501.

FOR FURTHER INFORMATION CONTACT: Rogue River-Siskiyou National Forest Acting Public Affairs Officer Virginia Gibbons at (541) 858–2214, e-mail: *vgibbons@fs.fed.us,* or USDA Forest Service, PO Box 520, 333 West 8th Street, Medford, OR 97501.

Dated: October 21, 2004.

Nancy Rose,

Acting Forest Supervisor, Rogue River-Siskiyou National Forest.

[FR Doc. 04–24022 Filed 10–24–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: This Notice announces the availability of $6 million of grant funds for the RCDI program through the Rural Housing Service (RHS), herein referred to as the Agency. Applicants must provide matching funds in an amount at least equal to the Federal grant. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development. This Notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4 p.m. eastern standard time January 25, 2005. The application date and time are firm. The Agency will not consider any application received after the deadline.

ADDRESSES: Entities wishing to apply for assistance may download the application requirements delineated in this Notice from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.* Applicants may also request application packages from: William Kenney, Rural Housing Service, Room 0183, Stop 0787, 1400 Independence Ave., SW., Washington, DC 20250–0787, Telephone (202) 720–1506, E-mail: *william.kenney@usda.gov.*

FOR FURTHER INFORMATION CONTACT: William Kenney, Senior Loan Specialist, Community Programs, RHS, USDA, STOP 0787, Rm. 0183, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1506, Facsimile (202) 690–0471, E-mail: *william.kenney@usda.gov.* You may also obtain information from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.*

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.446. This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0575–0180.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Rural Community Development Initiative.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.446.

Items in Supplementary Information

Part I—Funding Opportunity Description

Congress initially created the RCDI in fiscal year (FY) 2000 to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas. Numerous changes have been made each year since.

Part II—Award Information

Congress appropriated $6 million in FY 2004 for the RCDI. Qualified private, non profit and public (including tribal) intermediary organizations proposing to carry out financial and technical assistance programs will be eligible to receive the funding. The intermediary will be required to provide matching funds in an amount at least equal to the RCDI grant. The respective minimum and maximum grant amount per intermediary is $50,000 and $500,000. The intermediary must provide a program of financial and technical assistance to a private nonprofit, community-based housing and development organization, a low-income rural community or a federally recognized tribe.

Part III—Eligibility Information

A. Eligible Applicants

Qualified private, non profit and public (including tribal) intermediary organizations. Definitions that describe eligible organizations and other key terms are listed below:

B. Program Definitions

Agency—the Rural Housing Service (RHS) or its successor.

Beneficiary—entities or individuals that receive benefits from assistance provided by the recipient.

Capacity—the ability of a recipient to finance and implement housing, community facilities, or community and economic development projects.

Federally recognized tribes—tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the Notice in the **Federal Register** published by the Bureau of Indian Affairs on December 5, 2003, (68 FR 68180). Tribally Designated Housing Entities are eligible RCDI recipients.

Financial assistance—funds used by the intermediary to support the recipient's program, including funds that pass through the intermediary to the recipient for eligible RCDI purposes.

Funds—the RCDI grant and matching money.

Intermediary—a qualified private, nonprofit, or public (including tribal) organization that provides financial and technical assistance to multiple recipients.

Low-income rural community—an authority, district, economic development authority, regional council, or unit of government representing an incorporated city, town, village, county, township, parish, or borough.

Recipient—the entity that receives the financial and technical assistance from the intermediary. The recipient must be a private nonprofit community-based housing and development organization, a low-income rural community, or a federally recognized tribe.

Rural and rural area—a city or town, that has a population of 50,000 inhabitants or less, other than the urbanized area contiguous and adjacent to such a city or town.

Technical assistance—skilled help in improving the recipient's abilities in the areas of housing, community facilities, or community and economic development. The Agency will determine whether a specific activity qualifies as technical assistance.

C. Cost Sharing or Matching

Matching funds—cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount. These funds can only be used for eligible RCDI activities. In-kind contributions cannot be used as matching funds. Grant funds and matching funds must be used in equal proportions. This does not mean funds have to be used equally by line item. The request for reimbursement and supporting documentation must show that RCDI fund usage does not exceed the cumulative amount of matching funds used. Grant funds will be disbursed pursuant to relevant provisions of 7 CFR parts 3015, 3016, and 3019, as applicable.

Matching funds must be used to support the overall purpose of the RCDI program. RCDI funds will be disbursed on a reimbursable basis only. No advances will be made. Matching funds cannot be expended prior to execution of the RCDI Grant Agreement. No reimbursement will be made for any funds expended prior to execution of the RCDI Grant Agreement unless the grantee has requested and received written Agency approval of the costs prior to the actual expenditure. This exception is applicable for up to 90 days prior to grant closing and only applies to grantees that have received written approval but have not executed the RCDI Grant Agreement. The Agency cannot retroactively approve reimbursement for expenditures prior to execution of the RCDI Grant Agreement.

D. Other

Program Requirements

1. The recipient and beneficiary, but not the intermediary must be located in an eligible rural area. The location of the low-income rural community office that will be receiving the financial and technical assistance must be in a community with a median household income at or below, 80 percent of the State or national median household income, whichever is lower. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Offices is included in this Notice.

2. The recipients must be private nonprofit community-based housing and development organizations, low-income rural communities, or federally recognized tribes based on the RCDI definitions of these groups.

3. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient: Private nonprofit community-based housing and development organizations must provide a letter confirming its tax-exempt status from the IRS, a certificate of incorporation and good standing from the Secretary of State, or other similar and valid documentation of nonprofit status; for low-income rural community recipients, the Agency requires: (a) Evidence the entity is a public body, and (b) census data verifying that the median household income of the community where the office receiving the financial and technical assistance is located is at, or below, 80 percent of the State or national median household income, whichever is lower; for federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of federally recognized tribes for details on this list).

4. Individuals cannot be recipients.

5. The intermediary must provide matching funds at least equal to the amount of the grant.

6. The intermediary must provide a program of financial and technical assistance to the recipient.

7. The intermediary organization must have been organized for a minimum of 3 years and have at least 3 years prior experience working with private nonprofit community-based housing and development organizationss, low-income rural communities, or tribal organizations in the areas of housing, community facilities, or community and economic development

8. Proposals must be structured to utilize the grant funds within 3 years from the date of the award.

9. Each intermediary, whether singularly or jointly, may only submit one application for RCDI funds under this NOFA unless the intermediary's

participation is limited to providing all or part of the matching funds.

10. Recipients can participate in more than one RCDI application; however, after grant selections are made, the recipient can only participate in multiple RCDI grants if the type of financial and technical assistance they will receive is not duplicative.

11. The intermediary and the recipient cannot be the same entity. The recipient can be a related entity to the intermediary, if it meets the definition of a recipient.

12. A nonprofit recipient must provide evidence that it is a valid nonprofit when the intermediary applies for the RCDI grant. Organizations with pending requests for nonprofit designations are not eligible.

13. If the recipient is a low-income rural community, identify the unit of government to which the financial and technical assistance will be provided, *e.g.*, town council or village board. The financial and technical assistance must be provided to the organized unit of government representing that community, not the community at large.

14. Nonprofit recipients located in a rural area that is also a census designated place (CDP) are eligible.

15. The indirect cost rate for the intermediary will be in accordance with OMB Circulars A–87, A–122, and A–133.

Eligible Fund Uses

Fund uses must be consistent with the RCDI purpose (see ''Background'' section of this Notice). A nonexclusive list of eligible grant uses includes the following:

1. Provide financial and technical assistance to develop recipients' capacity and ability to undertake projects related to housing, community facilities, or community and economic development, *i.e.*, the intermediary hires a staff person to provide technical assistance to the recipient or the recipient hires a staff person, under the supervision of the intermediary, to carry out the financial and technical assistance provided by the intermediary.

2. Develop the capacity of recipients to conduct community development programs, *e.g.*, homeownership education or training for business entrepreneurs.

3. Develop the capacity of recipients to conduct development initiatives, *e.g.*, programs that support micro-enterprise and sustainable development.

4. Develop the capacity of recipients to increase their leveraging ability and access to alternative funding sources by providing training and staffing.

5. Develop the capacity of recipients to provide the financial and technical assistance component for essential community facilities projects.

6. Assist recipients in completing pre-development requirements for housing, community facilities, or community and economic development projects by providing resources for professional services, *e.g.*, architectural, engineering, or legal.

7. Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, management, financial systems, and information technology.

8. Purchase computers, software, and printers at the recipient level when directly related to the financial or technical assistance program being undertaken by the intermediary.

9. Provide funds to recipients for training-related travel costs and training expenses related to RCDI.

Ineligible Fund Uses

1. Funding a revolving loan fund (RLF).

2. Construction (in any form).

3. Intermediary preparation of strategic plans for recipients.

4. Funding illegal activities.

5. Grants to individuals.

6. Funding a grant where there may be a conflict of interest, or an appearance of a conflict of interest, involving any action by the Agency.

7. Paying obligations incurred before the beginning date or after the ending date of the grant agreement.

8. Purchasing real estate.

9. Improvement or renovation of the grantee's office space or for the repair or maintenance of privately owned vehicles.

10. Any other purpose prohibited in 7 CFR parts 3015, 3016, and 3019, as applicable.

11. Funds cannot be used for recipient's general operating costs.

12. Using grant or matching funds for Individual Development Accounts.

Program Examples

The purpose of this initiative is to develop or increase the recipient's capacity through a program of financial and technical assistance to perform in the areas of housing, community facilities, or community and economic development. Strengthening the recipient's capacity in these areas will benefit the communities they serve. The RCDI structure requires the intermediary (grantee) to provide a program of financial and technical assistance to recipients. The recipients will, in turn, provide programs to their communities (beneficiaries). The following are examples of eligible and ineligible purposes under the RCDI program. (These examples are illustrative and are not meant to limit the activities proposed in the application. Activities that meet the objective of the RCDI program will be considered eligible.)

1. The intermediary must work directly with the recipient, not the beneficiaries. As an example: the intermediary provides training to the recipient on how to conduct homeownership education classes. The recipient then provides ongoing homeownership education to the residents of the community—the ultimate beneficiaries. This ''train the trainer'' concept fully meets the intent of this initiative. The intermediary is providing financial and technical assistance that will build the recipient's capacity by enabling them to conduct homeownership education classes for the public. This is an eligible purpose. However, if the intermediary directly provided homeownership education classes to individuals in the recipient's service area, this would not be an eligible purpose because the recipient would be bypassed.

2. If the intermediary is working with a low-income community as the recipient, the intermediary must provide the financial and technical assistance to the entity that represents the low-income community and is identified in the application. Examples of entities representing a low-income community are a village board or a town council. If the intermediary provides technical assistance to the board of directors of the low-income community on how to establish a cooperative, this would be an eligible purpose. However, if the intermediary works directly with individuals from the community to establish the cooperative, this is not an eligible purpose. The recipient's capacity is built by learning skills that will enable them to support sustainable economic development in their communities on an ongoing basis.

3. The intermediary may provide technical assistance to the recipient on how to create and operate a RLF. The intermediary may not monitor or operate the RLF. RCDI funds, including matching funds, cannot be used to fund RLFs.

Part IV—Application and Submission Information

A. Address To Request Application Package

Entities wishing to apply for assistance may download the

application requirements delineated in this Notice from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.* Applicants may also request application packages from: William Kenney, Rural Housing Service, Room 0183, Stop 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1506, E-mail: *william.kenney@usda.gov.*

B. Content and Form of Application Submission

A complete application for RCDI funds must include the following:

1. A summary page, double-spaced between items, listing the following: (This information should not be presented in narrative form.)

a. Applicant's name,

b. Applicant's address,

c. Applicant's telephone number,

d. Name of applicant's contact person and telephone number,

e. Applicant's fax number,

f. County where applicant is located,

g. Congressional district number where applicant is located,

h. Amount of grant request,

i. Applicant's Tax Identification Number,

j. Date Universal Numbering System (DUNS) number. (Applicant Only)

k. Number of recipients, and

l. Source and amount of matching funds.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. A project overview, no longer than five pages, including the following items, which will also be addressed separately and in detail under ''Building Capacity'' of the ''Evaluation Criteria.''

a. The type of financial and technical assistance to be provided and how it will be implemented.

b. How the capacity and ability of the recipients will be improved.

c. The overall goal to be accomplished.

d. The benchmarks to be used to measure the success of the program.

4. Organizational documents, such as a certificate of incorporation and good standing from the Secretary of State where the applicant is incorporated and other similar and valid documentation of non-profit status, for the intermediary that confirms it has been legally organized for a minimum of 3 years as the applicant entity.

5. Verification of matching funds, *i.e.*, a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source. The applicant will be contacted by the Agency prior to grant award to verify that the matching funds continue to be available. The applicant will have 10 working days from the date of contact to submit verification of matching funds. If the applicant is unable to provide the verification within that timeframe, the application will be considered ineligible.

6. Applicant should verify that they have a DUNS number or take the steps needed to obtain one as soon as possible. Applicant can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711.

7. The following information for each recipient:

a. Recipient's entity name,

b. Complete address (mailing and physical location, if different),

c. County where located,

d. Number of congressional district where recipient is located,

e. Contact person's name and telephone number, and

f. Documentation on the population composition of the service area of the recipient.

8. Submit evidence each recipient entity is eligible:

a. Nonprofits—provide a valid letter from the IRS, confirming certificate from the Secretary of State, or other valid documentation of nonprofit status of each recipient.

b. Low-income rural community—provide a copy of the 2000 census data to verify the population and evidence that the median household income is at, or below, 80 percent of either the State or national median household income, whichever is lower. We will only accept data from *http://www.census.gov.* The specific instructions to retrieve data from this site are detailed under the ''Evaluation Criteria'' for ''Population'' and ''Income.''

c. Federally recognized tribes—provide the page listing their name from the current **Federal Register** list of tribal entities published on December 5, 2003, (68 FR 68180).

8. Each of the ''Evaluation Criteria'' must be addressed specifically and individually by category. Present these criteria in narrative form. Documentation must be limited to three pages per criterion with the exception of attachments for ''Population'' and ''Income.''

9. A timeline identifying specific activities and proposed dates for completion.

10. A detailed project budget that includes the RCDI grant amount and matching funds for the duration of the grant. This should be a line-item budget, by category. Categories such as salaries, administrative, other, and indirect costs that pertain to the proposed project must be clearly defined. Supporting documentation listing the components of these categories must be included.

11. Form SF–424, ''Application for Federal Assistance.'' (Do not complete Form SF–424A, ''Budget Information.'' A separate line-item budget should be presented as described in No. 10 of this section.) The budget should be dated: year 1, year 2, year 3.

12. Form SF–424B, ''Assurances—Non-Construction Programs.''

13. Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

14. Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

15. Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements.''

16. Certification of Non-Lobbying Activities.

17. Standard Form LLL, ''Disclosure of Lobbying Activities,'' if applicable.

18. Form RD 400–4, ''Assurance Agreement,'' for the applicant and each recipient.

19. Identify and report any association or relationship with Rural Development employees.

The required forms and certifications can be downloaded from the RCDI Web site at: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.*

C. Submission Dates and Times

The original application package must be submitted to: William Kenney, Rural Housing Service, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, and a copy of the application must be submitted to the Rural Development State Office where the applicant is located. A listing of Rural Development State Offices is included in this Notice. Applications sent electronically or by facsimile will not be accepted.

The deadline for receipt of an application is 4 p.m. eastern standard time on January 25, 2005. The application deadline date and hour are firm and apply to submission of the original application to the National Office in Washington, DC. The Agency will not consider any application received after the deadline. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact is provided elsewhere in this Notice.

D. Funding Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, ''Expenses of Meetings,''

appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI grant funds cannot be used for these meeting-related expenses. Matching funds may be used to pay for these expenses. RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting. RCDI funds can be used for travel, transportation, or subsistence expenses for training and technical assistance purposes. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses will be similar to those paid to Agency employees. Rates are based upon location. Rate information can be accessed on the Internet at *http://policyworks.gov/perdiem.*

Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Grantees and recipients may exceed the Government rate for lodging by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees. Mileage and gas reimbursement will be the same rate used by Agency employees. The current mileage and gas reimbursement rate is 37.5 cents per mile.

Part V—Application Review Information

A. Evaluation Criteria

Applications will be evaluated using the following criteria and weights:

1. Building Capacity—Maximum 60 Points

The applicant must demonstrate how they will improve the recipients' capacity, through a program of financial and technical assistance, as it relates to the RCDI purposes. Capacity-building technical assistance should provide new functions to the recipients or expand existing functions that will enable the recipients to undertake projects in the areas of housing, community facilities, or community and economic development that will benefit the community. The program of financial and technical assistance provided, how the program is delivered, and the measurability of the program's effectiveness will determine the merit of the application. All applications will be competitively ranked with the applications providing the most improvement in capacity development and measurable activities being ranked the highest. Capacity-building technical assistance may include, but is not limited to: training to conduct community development programs, *e.g.*, homeownership education, or the establishment of minority business entrepreneurs, cooperatives, or micro-enterprises; organizational development, *e.g.*, assistance to develop or improve board operations, management, and financial systems; instruction on how to develop and implement a strategic plan; instruction on how to access alternative funding sources to increase leveraging opportunities; staffing, *e.g.*, hiring a person at intermediary or recipient level to provide technical or financial assistance to recipients; and purchase technology equipment at the recipient level, *e.g.*, computers, printers, and software.

The narrative response must:

a. Describe the type of financial and technical assistance to be provided to the recipients and the activities that will be conducted to deliver the financial and technical assistance;

b. Explain how financial and technical assistance will develop or increase the recipient's capacity. Indicate whether a new function is being developed or if existing functions are being expanded or performed more effectively;

c. Identify which RCDI purpose areas will be addressed with this assistance: housing, community facilities, or community and economic development; and

d. Describe how the results of the financial and technical assistance will be measured. What benchmarks will be used to measure effectiveness?

e. Scoring—maximum of 60 points, broken down as follows:

1. Type of financial and technical assistance and implementation activities. 0–35 points.

a. How well defined is the purpose of this proposal?

b. Are the implementation activities specifically defined?

c. Will the proposed implementation activities actually develop the recipient's capacity?

2. How financial and technical assistance will develop capacity. 0–10 points.

a. Is a new function being developed and will it build capacity at the recipient level?

b. Is an existing function being expanded or performed more effectively and will it build capacity at the recipient level?

3. RCDI purpose. 0–5 points.

a. Housing,

b. Community facilities, or

c. Community and economic development.

4. Measuring outcomes. 0–10 points.

a. What benchmarks will be used to measure outcomes and effectiveness?

b. Are the proposed benchmarks an effective measurement for the type of financial and technical assistance provided?

2. Expertise—Maximum 30 Points

The applicant must demonstrate that it has conducted programs of financial and technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas. Provide the name, contact information, and amount of the financial and technical assistance the applicant organization has provided to the following for the last 5 years:

a. Nonprofit organizations in rural areas.

b. Low-income communities in rural areas, (also include the type of entity, *e.g.*, city government, town council, or village board).

c. Federally recognized tribes or any other culturally diverse organizations.

d. Organization synopsis. Scoring—maximum 30 points.

1. The applicant has worked with groups in at least one of the three categories. 0–6 points.

2. The types of financial and technical assistance provided are similar to the RCDI purposes. 0–15 points.

3. The applicant demonstrates experience in working with the types of entities listed as recipients in the application. 0–9 points.

3. Population—Maximum 30 Points

Population is based on the 2000 census data for the community in which the recipient is located. Community is defined for scoring purposes as a city, town, village, county, parish, borough, or census-designated place where the recipient's office is physically located. The applicant must submit a copy of the census data from the following Web site to verify the population figures used for each recipient. The data can be accessed on the Internet at *http://www.census.gov*; click on ''American FactFinder'' from the left menu; click on ''Fact Sheet'' from the left menu; at the right, fill in one or more fields and click 'Go'; print the Fact Sheet for submission for each recipient location. The average population of the recipient locations will be used and will be scored as follows:

Population	Scoring
5,000 or less	30 points.
5,001 to 10,000	20 points.
10,001 to 20,000	10 points.

Population	Scoring
20,001 to 50,000	5 points.

4. Income—Maximum 30 Points

The average of the median household income for the communities where the recipients are physically located will determine the points awarded. Applicants may compare the average recipient median household income to the State median household income or the national median household income, whichever yields the most points. The national median household income to be used is $41,994. The applicant must submit a copy of the income data from the following Web site to verify the income for each recipient. The data being used is from the 2000 census. The data can be accessed on the Internet at *http://www.census.gov*; click on ''American FactFinder'' from the left menu; click on ''Fact Sheet'' from the left menu; at the right, fill in one or more fields and click 'Go'; Income data for the recipient location can be highlighted on the Fact Sheet submitted for population. Points will be awarded as follows:

Average recipient median income is:	Scoring
Less than 60 percent of the State or national median household income	30 points.
Between 60 and 70 percent of the State or national median household income	20 points.
Greater than 70 percent of the State or national median household income	10 points.

5. Innovative Approach—Maximum 20 Points

The applicant must demonstrate that it has developed an innovative approach that can be used by other organizations as a model. To be considered innovative, the approach must propose an easily replicated new or useful service or method of providing services to recipients that builds their capacity to improve their communities in the areas of housing, community facilities, or community and economic development. Points will be awarded to applications that have the highest score on the following factors:

a. Ease of replication by private nonprofit community-based housing and development organizations, low-income rural communities, or federally recognized tribes;

b. Uniqueness of proposal;

c. Financial return to rural communities; and

d. Need by private nonprofit community-based housing and development organization, low-income rural community, or federally recognized tribe.

If warranted, up to 20 applicants will be eligible to receive points in this category. The application ranking and scoring are:

Ranking	Scoring
10 highest-ranking applications for this criterion	20 points.
Next 10 highest-ranking applications for this criterion	10 points.

If there is a tied score, it will be resolved by using the format listed under ''Rating and Ranking'' under ''Application Selection Process'' elsewhere in this Notice.

6. Soundness of Approach—Maximum 50 Points

The applicant can receive up to 50 points for soundness of approach. The overall proposal will be considered under this criterion. Applicants must list the page numbers in the application that address these factors.

a. The ability to provide the proposed financial and technical assistance based on prior accomplishments has been demonstrated. 0–5 points.

b. The proposed financial and technical assistance program is clearly stated and the applicant has defined how this proposal will be implemented. The plan for implementation is viable. 0–20 points.

c. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount and matching funds should be utilized to maximize capacity building at the recipient level. 0–15 points.

d. The proposal fits the objectives for which applications were invited. 0–10 points.

7. Geographic Distribution Points—20 Points.

The applicant must provide a map that specifically describes the areas covered by the recipients. After applications have been evaluated and awarded points under the first 6 criteria, the Agency may award 20 points per application to promote a broad geographic distribution of RCDI funds.

8. Purpose Distribution Points—20 Points

The applicant must state the primary purpose of the application, *i.e.*, housing, community facilities, or community and economic development. After applications have been evaluated and awarded points under the first 6 criteria, the Agency may award 20 points per application to promote diversity of RCDI purposes.

9. Proportional Distribution Points—20 Points

The applicant must state the amount of the grant request. After applications have been evaluated and awarded points under the first 6 criteria, the Agency may award 20 points per application to promote distribution of grant awards between the range of $50,000 to $500,000.

B. Review and Selection Process

Rating and ranking. Applications will be rated and ranked by a review panel based on the ''Evaluation Criteria and Weights'' contained in this Notice. If there is a tied score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for ''Building Capacity'' and the applicant with the highest score in that category will receive a higher ranking. If the scores for ''Building Capacity'' are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

Initial screening. The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are many of the reasons for rejection from the previous funding rounds to help the applicant prepare a better application. The following reasons for rejection are not all inclusive; however, they represent

the majority of the applications previously rejected.

1. Recipients were not located in eligible rural areas based on the definition in this Notice.

2. Applicants failed to provide evidence of recipient's status, *i.e.*, documentation supporting nonprofit evidence of organization.

3. Application did not follow the RCDI structure with an intermediary and recipients.

4. Recipients were not identified in the application.

5. Intermediary did not provide evidence it had been incorporated for at least 3 years as the applicant entity.

6. Applicants failed to address the ''Evaluation Criteria.''

7. The purpose of the proposal did not qualify as an eligible RCDI purpose.

8. Funds cannot be used for construction or renovations.

9. Financial and technical assistance cannot be provided directly to individuals.

Part VI—Award Administration Information

A. General Information

Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants to those responsible, eligible applicants whose applications are judged meritorious under the procedures set forth in this Notice.

B. Award Notice

Applicant will be notified of selection by letter. In addition, applicant will be requested to verify that components of the application have not changed. The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds.''

C. Administrative and National Policy Requirements

Grantees will be required to do the following:

1. Execute a Rural Community Development Initiative Grant Agreement, which is published at the end of this NOFA.

2. Execute Form RD 1940–1, ''Request for Obligation of Funds.''

3. Use Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements.

4. Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

5. Maintain a financial management system that is acceptable to the Agency.

6. Ensure that records are maintained to document all activities and expenditures utilizing RCDI grant funds and matching funds. Receipts for expenditures will be included in this documentation.

7. Provide annual audits or management reports on Form RD 442–2, ''Statement of Budget, Income, and Equity,'' and Form RD 442–3, ''Balance Sheet,'' depending on the amount of Federal funds expended and the outstanding balance.

8. Collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain the same data on beneficiaries. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' Vol. 62, No. 210, October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should *not* be submitted with the application, but should be available upon request by the Agency.

9. Provide a final project performance report.

10. Identify and report any association or relationship with Rural Development employees on a format provided by the Agency.

11. A Civil Rights Impact Analysis Certification must be completed by the Agency prior to grant approval.

12. A pre-award compliance review will be conducted by the Agency prior to closing the grant.

13. The intermediary and recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Executive Order 12250.

14. The grantee must comply with policies, guidance, and requirements as described in the following applicable OMB Circulars and Code of Federal Regulations:

a. OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments);

b. OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations);

c. OMB Circular No. A–133 (Audits of States, Local Governments, and Non-Profit Organizations);

d. 7 CFR part 3015 (Uniform Federal Assistance Regulations);

e. 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); and

f. 7 CFR part 3019 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations).

D. Reporting

Reporting requirements can be found in the Grant Agreement included in this Notice.

Part VII—Agency Contact

William Kenney, Rural Housing Service, Room 0183, Stop 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1506, E-mail: *william.kenney@usda.gov*.

Part VIII—Other Information

Rural Development State Office Responsibilities During the Application Process

The State Office will review the application and provide the State Director's written comments and recommendations to the National Office. Comments must include the following:

1. Determine if each recipient listed in the application is located in an eligible rural area based on the RCDI definition of rural.

2. Consult with other program areas regarding their experience with the intermediary or recipients, if any.

3. Determine the compatibility of the application with the goals of the State's strategic plan.

4. Provide comments or recommendations pertaining to the application.

Comments must be submitted to William Kenney within 3 weeks from the RCDI application deadline.

Grant Amount Determination

In the event the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or withdraw the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

Rural Development State Office Contacts

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495, James B. Harris.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645,

(907) 761–7705, TDD (907) 761–8905, Dean Stewart.

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8747, TDD (602) 280–8705, Leonard Gradillas.

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3200, Jesse G. Sharp.

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5810, TDD (530) 792–5848, Janice Waddell.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, 720–544–2903, TDD 720–544–2976, Scott Dare.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 4607 South DuPont Highway, P.O. Box 400, Camden, DE 19934–0400, (302) 697–4300, TDD (302) 697–4303, James E. Waters.

Florida & Virgin Islands State Office, 4440 NW. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3440, TDD (352) 338–3499, Michael Langston.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2171, TDD (706) 546–2034, Jerry M. Thomas.

Guam, Served by Hawaii State Office.

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380, TDD (808) 933–8321, Ted Matsuo.

Idaho State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5617, TDD (208) 378–5600, Daniel H. Fraser.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200, TDD (217) 403–6240, Gerald A. Townsend.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 431), TDD (317) 290–3343, Gregg Delp.

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663, TDD (515) 284–4858, Dorman Otte.

Kansas State Office, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2730, TDD (785) 271–2767, Gary L. Smith.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7415, TDD (859) 224–7300, Vernon Brown.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7940, TDD (318) 473–7920, Danny H. Magee.

Maine State Office, 967 Illinois Ave., Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9106, TDD (207) 942–7331, Ron Lambert.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4300, TDD (413) 253–7068, Daniel R. Beaudette.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip H. Wolak.

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800, TDD (651) 602–3799, Rick Jackson.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316, TDD (601) 965–5850, Bette Oliver.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0995, TDD (573) 876–9480, D. Clark Thomas.

Montana State Office, 900 Technology Blvd., Suite B, Bozeman, MT 59771, (406) 585–2530, TDD (406) 585–2562, Mitchell Copp.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5559, TDD (402) 437–5551, Denise Brosius-Meeks.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 26), TDD (775) 885–0633, Mike Holm.

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6055, TDD (603) 223–6083, Everett Bailey.

New Jersey State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7750, Michael P. Kelsey.

New Mexico State Office, 6200 Jefferson St. NE., Room 255, Albuquerque, NM 87109, (505) 761–4950, TDD (505) 761–4938, Clyde F. Hudson.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400, TDD (315) 477–6447, Gail Giannotta.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000, TDD (919) 873–2003, Phyllis Godbold.

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037, TDD (701) 530–2113, Donald Warren.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400, TDD (614) 255–2554, David M. Douglas.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000, TDD (405) 742–1007, Michael W. Schrammel.

Oregon State Office, 101 SW. Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3300, TDD (503) 414–3387, Joe Sahlfeld.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299, TDD (717) 237–2261, Gary Rothrock.

Puerto Rico State Office, IBM Building—Suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, (787) 766–5095, TDD (787) 766–5332, Ramon Melendez.

Rhode Island, Served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–5163, TDD (803) 765–5697, Larry D. Floyd.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100, TDD (605) 352–1147, Sandra Mencke.

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, Keith Head.

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700, TDD (254) 742–9712, Francesco Valentin.

Utah State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, P.O. Box 11350, Salt Lake City, UT 84147–0350, (801) 524–4326, TDD (801) 524–3309, Bonnie Carrig.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000, TDD (802) 223–6365, Rhonda Shippee.

Virgin Islands, Served by Florida State Office.

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550, TDD (804) 287–1753, Carrie Schmidt.

Washington State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (509) 664–0203, Sandi Boughton.

Western Pacific Territories, Served by Hawaii State Office.

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860, TDD (304) 284–4836, Dianne Crysler.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7614, TDD (715) 345–7610, Mark Brodziski.

Wyoming State Office, Federal Building, Room 1005, 100 East B, P.O. Box 820, Casper, WY 82602, (307) 261–6300, TDD (307) 261–6333, Jack Hyde.

Dated: October 9, 2004.

Russell T. Davis,

Administrator, Rural Housing Service.

OMB NO. 0575–0180

United States Department of Agriculture, Rural Housing Service, Rural Community Development Initiative Grant Agreement

THIS GRANT AGREEMENT (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI).

BETWEEN _____

a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service (the Agency), Department of Agriculture, (Grantor), for the benefit of recipients listed in Grantee's application for the grant.

WITNESSETH:

The principal amount of the grant is $_____ (Grant Funds). Matching funds, in an amount equal to the grant funds, will be provided by Grantee. The Grantee and Grantor will execute Form RD 1940–1, ''Request for Obligation of Funds.''

Whereas,

Grantee will provide a program of financial and technical assistance to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas;

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Now, therefore, in consideration of the grant;

Grantee agrees that Grantee will:

A. Provide a program of financial and technical assistance in accordance with the proposal outlined in the application, (see Attachment A), the terms of which are incorporated with this Agreement and must be adhered to. Any changes to the approved program of financial technical assistance must be approved in writing by the Grantor;

B. Use Grant Funds only for the purposes and activities specified in the application package approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

C. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Lodging rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be accessed on the Internet at *http://policyworks.gov/perdiem;*

D. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Matching funds may be used to pay these expenses. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345.

E. Request quarterly reimbursement for grant activities during the previous quarter. Reimbursement will be made on a pro rata basis with matching funds. Form SF 270, ''Request for Advance or Reimbursement,'' will be used to request reimbursement. A project performance report, in narrative form, and a financial report, reflecting the activities conducted, must accompany the request for reimbursement. Matching fund usage must be included in all reports.

F. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 30 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

1. Describe the activities that the funds reflected in the financial status report were used for;

2. A comparison of actual accomplishments to the objectives for that period;

3. Reasons why established objectives were not met, if applicable;

4. Problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

5. Objectives and timetables established for the next reporting period;

6. If available, a summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

(a) What have been the most challenging or unexpected aspects of this program?

(b) What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(c) Are there any post-grant plans for this project? If yes, how will they be financed?

(d) If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

G. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, sexual orientation, or physical or mental disability;

H. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, must be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, sexual orientation, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that, where there are non-English speaking populations, materials are provided in the language that is spoken;

I. Ensure recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

J. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure that their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by Title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

K. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor any legally permitted damages together with any legally permitted interest from the date of the default. At Grantor's election, any default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, without regard to prior waivers of this Agreement, by proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to ensure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

L. Provide Financial Management Systems that will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation; and

5. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching fund usage, *i.e.*, bank statements or copies of funding obligations from the matching source.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

N. Provide an A–133 audit report if $500,000 or more of Federal funds are expended in a 1-year period. If Federal funds expended during a 1-year period are less than $500,000 and there is an outstanding loan balance of $500,000 or more, an audit in accordance with generally accepted government auditing standards is required. If Federal funds expended during a 1-year period are less than $500,000 and there is an outstanding loan balance of less than $500,000, a management report may be submitted on Forms RD 442–2, ''Statement of Budget, Income and Equity,'' and 442–3, ''Balance Sheet'';

O. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

P. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that:

A. It will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds. The funds will be disbursed to Grantee on a pro rata basis with the Grantee's matching funds; and

B. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

1. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

2. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

A. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period;

B. The Grantor must approve any changes in recipient or recipient composition;

C. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor: *Provided however,* That any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate 3 years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations;

D. As a condition of the Agreement, the Grantee certifies that it is in compliance with, and will comply in the course of the Agreement with, all applicable laws, regulations, Executive Orders, and other generally applicable requirements, which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Executive Order 12250;

E. The Grantee will ensure that the recipients comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and Executive Order 12250. Each recipient must sign Form RD 400–4, ''Assurance Agreement'';

F. The provisions of 7 CFR part 3015, ''Uniform Federal Assistance Regulations,'' part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' or part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations,'' and the fiscal year 2003 ''Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)'' are incorporated herein and made a part hereof by reference; and

G. This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

In Witness Whereof, Grantee has this day authorized and caused this Agreement to be executed by

_____

Attest

_____

By _____

(Grantee)

(Title) _____

Date _____

UNITED STATES OF AMERICA RURAL HOUSING SERVICE

By _____

(Grantor) (Name) (Title)

Date _____

Attachment A

[Application proposal submitted by grantee.]

[FR Doc. 04–24013 Filed 10–26–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

[I.D. 102104E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0361.

Type of Request: Regular submission.

Burden Hours: 1,130.

Number of Respondents: 1,481.

Average Hours Per Response: 45 minutes.

Needs and Uses: Vessels in the West Coast Highly Migratory Species fishery would be required to display the vessel's official number in three locations (port and starboard sides of the deckhouse or hull, and on an appropriate weather deck). The requirement is necessary to aid enforcement of fishery regulations.

Affected Public: Business or other for-profit organizations, and individuals or households.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: October 19, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–24007 Filed 10–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102104A]

Proposed Information Collection; Comment Request; Foreign Fishing Vessel Permit Applications

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 December 27, 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 Bob Dickinson, F/SF4, Room 13304, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone (301) 713–2276, ext. 154).

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 204 of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR 600, Subpart F, provide for the issuance of fishing permits to foreign vessels. The information submitted in applications to fish is used to determine whether permits should be issued to authorize directed foreign fishing, participation in joint ventures with U.S. vessels, or transshipments of fish or fish products within U.S. waters.

II. Method of Collection

Paper forms are used.

III. Data

OMB Number: 0648–0089.

Form Number: None.

Type of Review: Regular submission.

Affected public: Business or other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time Per Response: 1.5 hours for an application for a directed fishery; 2 hours for a joint venture application; and 45 minutes for a transshipment permit.

Estimated Total Annual Burden Hours: 14.5.

Estimated Total Annual Cost to Public: $4,560.

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: October 19, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–24003 Filed 10–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102104B]

Proposed Information Collection; Comment Request; Pacific Albacore Logbook

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 December 27, 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 Al Coan, Southwest Fishery Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92038–0271 (phone 858–546–7079).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration, Southwest Fishery Science Center operates a pacific albacore data collection program. Fishermen participating in the program submit logbooks documenting their catch and effort on fishing trips. The agency uses the information to assess the status of albacore stocks and to monitor the fishery.

II. Method of Collection

A logbook paper form is used.

III. Data

OMB Number: 0648–0223.

Form Number: NOAA Form 88–197.

Type of Review: Regular submission.

Affected Public: Business and other non-profit organizations.

Estimated Number of Respondents: 4,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost to Public: $2,560.

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: October 19, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–24004 Filed 10–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102104C]

Proposed Information Collection; Comment Request; Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries

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 December 27, 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 Patsy A. Bearden, 907–586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NMFS seeks to renew a collection of information for the continued management of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries off Alaska as well as the Western Alaska Community Development Quota Program (CDQ) halibut fishery. The IFQ program allocates annual total catch limits for the halibut and sablefish fisheries among individual fishermen. The CDQ halibut program allocates annual total catch limits for the halibut fishery among individual CDQ fishermen. Fishermen are assigned Quota Shares (QS) for the fisheries, and then annually receive an IFQ and/or CDQ. Applications and reporting are require to manage and track the program.

II. Method of Collection

The information is submitted to respond to requirements set forth in a regulation. Paper applications and reports, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Number: 0648–0272.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions and business or other for-profits organizations.

Estimated Number of Respondents: 6,742.

Estimated Time Per Response: 30 minutes for Application for IFQ/CDQ Landing Card; 30 minutes for Application for IFQ/CDQ Registered Buyer Permit; 1 hour for Request for Application for Quota Share, Individuals; 1 hours for Request for Application for Quota Share, Existing Corporations or Partnerships; 1 hour for Request for Application for Quota Share, Dissolved Corporations or Partnerships; 4 hours for Letter of Appeal; 30 minutes for QS/IFQ Beneficiary Designation Form; 2 hours for QS Holder: Identification of Ownership Interest; 30 minutes for Annual Updates on the Status of Corporations and Partnerships QS; 2 hours for Application for QS/IFQ Transfer Eligibility Certificate; 2 hours for Application for Transfer of QS/IFQ (includes sweep-up); 30 minutes for Application for Replacement of Certificates, Permits, or Cards; 30 minutes for Request for Automated Transaction Terminal; 6 minutes for IFQ Administrative Waiver; 12 minutes for Prior Notice of IFQ Landing; 12 minutes for electronic IFQ/CDQ Landing Report; 18 minutes for manual IFQ/CDQ Landing Report; 15 minutes for Departure Report; 12 minutes for Transshipment Authorization; 6 minutes for Dockside Sales Receipt; 200 hours for Application to Become a Community Quota Entity (CQE); 40 hours for CQE Annual Report; 30 minutes for Approval of Transfer from Governing Body; and 10 hours for Community Petition to Form Governing Body.

Estimated Total Annual Burden Hours: 12,012.

Estimated Total Annual Cost to Public: $82.

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: October 19, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–24005 Filed 10–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102104D]

Proposed Information Collection; Comment Request; Billfish Tagging Report

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 December 27, 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 David Holts, Southwest Fishery Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92038–0271 or (phone 858–546–7186).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administrations's Southwest Fishery Science Center operates a billfish tagging program. Tagging supplies are provided to volunteers. When they catch and tag fish they submit a brief report on the fish tagged and the location of the tagging. The information is used in conjunction with tag returns to determine billfish migration patterns, mortality rates, and similar information useful in the management of the fishery.

II. Method of Collection

A postcard-size paper form is used.

III. Data

OMB Number: 0648–0009.
Form Number: NOAA Form 88–162.
Type of Review: Regular submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 750 to 1200.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 63.
Estimated Total Annual Cost to Public: $0.

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: October 19, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–24006 Filed 10–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102104G]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held November 7–10, 2004.

ADDRESSES: These meetings will be held at the Sheraton South Padre Island, 310 Padre Boulevard, South Padre Island, TX 78597.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

Tuesday, November 9, 2004

8:30 a.m. Convene.

8:45 a.m – 9 a.m. – Appointment of Committee Members.

9 a.m. – 9:10 a.m. – Receive public testimony on Exempted Fishing Permits (if any).

9:10 a.m. – 10:30 a.m. – Receive the Shrimp Management Committee report.

10:30 a.m. – 11:30 a.m. – Receive the Habitat Protection Committee report.

1 p.m. – 2 p.m. – Receive the Law Enforcement Committee report.

2 p.m. – 5:30 p.m. – Receive the Reef Fish Management Committee report.

Wednesday, November 10, 2004

8:30 a.m. – 9 a.m. – Receive the Joint Reef Fish/Mackerel/Red Drum Committee report.

9 a.m. – 9:15 a.m. – Receive the Mackerel Management Committee report.

9:15 a.m. – 9:30 a.m. – Receive the Joint Artificial Reef/Reef Fish Management Committee report.

9:30 a.m. – 9:45 a.m. – Receive the Data Collection Committee report.

9:45 a.m. – 10 a.m. – Receive the Administrative Policy Committee report.

10 a.m. – 10:15 a.m. – Receive the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee report.

10:15 a.m. – 10:30 a.m. – Receive Enforcement Reports.

10:30 a.m. – 11 a.m. – Receive the NMFS Regional Administrator's Report.

11 a.m. – 11:15 a.m. – Receive Director's Reports.

11:15 a.m. – 11:30 a.m. – Other Business.

Committee

Sunday, November 7, 2004

9 a.m. – 10 a.m. – The Mackerel Management Committee will review public hearing and Advisory Panel (AP)/Scientific and Statistical Committee (SSC) comments on Draft Coastal Migratory Pelagics (CMP) Amendment 15 which proposes a permanent limited access system on commercial mackerel vessel permits.

10 a.m. – 11 a.m. – The Law Enforcement Committee will review and approve a 5–year Strategic Plan and an Operation Plan for 2005.

11 a.m. – 12 noon – The Joint Reef Fish/Mackerel Committees will review a Mississippi Fishing Banks Special Management Zone Request.

1:30 p.m. – 5:30 p.m. – The Reef Fish Management Committee will consider the preferred alternatives for the structure of a Red Snapper Individual Fishing Quota (IFQ) program and review an Options Paper for Reef Fish Amendment 18A. The Committee will also review Draft Reef Fish Amendment 24 with public hearing and AP/SSC comments, which proposes a permanent limited access system on commercial mackerel vessel permits.

Monday, November 8, 2004

8:30 a.m. – 10 a.m. – The Reef Fish Management Committee will reconvene to complete its work.

10 a.m. – 12 noon – The Shrimp Management Committee will review the Business Plan for the Gulf Shrimp Industry that was drafted by NOAA Fisheries and which contains management alternatives that NOAA Fisheries believes are necessary for the industry to survive the economic slump caused by importation of foreign shrimp. The Committee will also hear a report by NOAA Fisheries enforcement on a sea turtle management strategy.

1:30 p.m. – 2:30 p.m. – The Habitat Protection Committee will review and recommend a public hearing draft of a Generic Essential Fish Habitat (EFH) Amendment and review the recommendations of the Southeast Aquatic Resources Partnership (SARP) on cooperative state and federal management of aquatic resources.

2:30 p.m. – 3:30 p.m. – The Joint Reef Fish/Mackerel/Red Drum Committees will review the first draft of an Options Paper for a Generic Amendment for Regulating Offshore Aquaculture and hear a status report on the Amendment to Extend the Charter Vessel Permit Moratorium.

3:30 p.m. – 4:30 p.m. – The Data Collection Committee will review the fishery community socioeconomic studies being carried out by NOAA Fisheries.

4:30 p.m. – 5:30 p.m. – The Administrative Policy Committee will discuss options for consolidating committees.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the untimely completion of discussion relevant to other agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by October 27, 2004.

Dated: October 21, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–24009 Filed 10–26–04; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled AmeriCorps*VISTA Concept Paper and AmeriCorps*VISTA Project Application 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). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Alison Fritz at (202) 606–5000, ext. 233. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register:**

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: 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 Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on July 16, 2004. This comment period ended September 14, 2004 and resulted in one comment being received. The comment indicated that the burden hours estimate of four (4) was low for the project application, and a suggestion was made to change the number of burden hours to twelve (12). This year, we are adding performance measurement as an application requirement, which, based on a pilot of this effort, has an impact upon the burden hours. Following consultation with program management staff with daily oversight over the applications, and with representatives of organizations routinely asked to fill out the applications, a determination was made to increase the estimated burden hours to nine (9) hours as an appropriate estimate of the average number of hours needed to complete the proposed application.

Description: AmeriCorps*VISTA requires all applicant organizations to submit a Concept Paper and if approved, a Project Application including a budget when applying for AmeriCorps*VISTA resources.

Type of Review: Revision of a currently-approved collection.

Agency: Corporation for National and Community Service.

Titles: AmeriCorps*VISTA Concept Paper and AmeriCorps*VISTA Application.

OMB Number: 3045–0038.

Agency Numbers: CNS1421a (concept paper) and CNS1421b (project application).

Affected Public: Eligible applicants for funding with the Corporation.

Total Respondents: 1700 for concept paper and 1500 for project application.

Frequency: Once for concept paper and annually for project application.

Average Time Per Response: 1.5 hours for concept paper and 9 hours for project application.

Estimated Total Burden Hours: 16,050 total (2550 hours for concept paper and 13,500 hours for project application).

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: October 19, 2004.

Howard Turner,

*Acting Director, AmeriCorps*VISTA.*

[FR Doc. 04–24012 Filed 10–26–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and renorming of the tests.

DATES: November 18, 2004, from 8 a.m. to 5.p.m., and November 19, 2004, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Mayflower Park Hotel, 405 Olive Way, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than November 5, 2004.

Dated: October 20, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–23987 Filed 10–26–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, 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 November 26, 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, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 21, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Loan Discharge Application: Unpaid Refund.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 400. Burden Hours: 200.

Abstract: If a school fails to make a required refund of a Federal Family Education Loan Program or William D. Ford Federal Direct Loan Program loan, a borrower uses this form to apply for a discharge of the portion of the loan that was not refunded.

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 2597. 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 Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2869 Filed 10–26–04; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, 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 November 26, 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, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 21, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Request for FY 2005 Designation As An Eligible Institution Under Title III and V Programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,200.

Burden Hours: 8,400.

Abstract: Collection of information is necessary in order for the Secretary of Education to designate an institution of higher education (IHE) eligible to apply for funding under Title III, Part A and Title V of the Higher Education Act of 1965, as amended.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 2635. 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 Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2870 Filed 10–26–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, December 6, 2004, 8:30 a.m. to 5 p.m., and Tuesday, December 7, 2004, 8:30 a.m. to 12 p.m.

ADDRESSES: The Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

FOR FURTHER INFORMATION CONTACT: Karen Talamini; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, Independence Avenue, Washington, DC 20585; Telephone: (301) 903–4563.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- News from the Office of Science.
- News from the Office of Basic Energy Sciences.
- Final Report of BESAC Subcommittee on Theory and Computation in Basic Energy Sciences.
- BESAC discussion.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Karen Talamini at 301–903–6594 (fax) or *karen.talamini@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on October 22, 2004.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–24056 Filed 10–26–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC).

Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 18, 2004; 8:30 a.m. to 5 p.m.

ADDRESSES: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852–1699.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–90/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: (301) 903–0536.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, November 18, 2004.

- Perspectives from Department of Energy and National Science Foundation.
- Discussion of NSAC Response and Transmittal Letter on Education.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, (301) 903–0536 or *Brenda.May@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 22, 2004.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 04–24057 Filed 10–26–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, December 14, 2004, 9 a.m. to 6 p.m.; Wednesday, December 15, 2004, 9 a.m. to 12 noon.

ADDRESSES: The Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878, USA.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: The main purpose of the meeting is for FESAC to finalize the report on the charge of establishing priorities for the fusion program. The program priorities that the FESAC will recommend for implementation will be established by identifying the scientific and technological issues that need to be addressed, proposing a series of campaigns to address these issues, and recommending the priority order in which the program should proceed with these campaigns.

Tentative Agenda

Tuesday, December 14, 2004.

- Office of Science Perspective.
- Office of Fusion Energy Sciences Perspective.
- Presentation by the Priority Panel on its findings and recommendations.
- Public comments.

Wednesday, December 15, 2004.

- ITER Project Status.
- Further discussions.
- Adjourn.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 22, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–24055 Filed 10–26–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–435–001]

ANR Pipeline Company; Notice of Compliance Filing

October 20, 2004.

Take notice that on October 15, 2004, ANR Pipeline Company, (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sub First Revised Sheet No. 130.01, with an effective date of November 1, 2004.

ANR states that the tariff sheets are being filed in compliance with the Commission's order issued September 30, 2004, in the referenced proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at

http://www.ferc.gov. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2864 Filed 10–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–27–000]

ANR Pipeline Company; Notice of Service Agreement Filing

October 20, 2004.

Take notice that on October 15, 2004 subject to section 4 of the Natural Gas Act (NGA) and part 154 of the Regulations of the Federal Energy Regulatory Commission (Commission), ANR Pipeline Company (ANR), tendered for filing and approval, one service agreement (Agreement) between ANR and Constellation Newenergy—Gas Division WI pursuant to ANR's Rate Schedule FTS–1.

ANR requests the Commission find that the Agreement contains an acceptable material deviation from ANR's Form of Service Agreement and accept the attached tariff sheet which references the Agreement as non-conforming.

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 date as indicated below. 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.

Intervention and Protest Date: 5 p.m. Eastern Time on October 27, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2865 Filed 10–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–028]

Gulfstream Natural Gas System, L.L.C.; Notice of Extension of Time

October 20, 2004.

On October 8, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed a motion for an extension of time to comply with the Commission's order (Order) issued September 22, 2004, in the above-docketed proceeding. 108 FERC ¶ 61, 294 (2004). In its motion, Gulfstream states that key personnel have been focused in recent weeks on operational issues in the aftermath of Hurricanes Frances and Ivan and that Gulfstream has been working closely with the shippers in Florida to ensure that it maintains sufficient gas deliveries to meet the energy requirements of Florida utilities. For these reasons, Gulfstream requests additional time to make the filing needed to fully comply with the September 22 Order.

Upon consideration, notice is hereby given that an extension of time to make its compliance filing as directed by the September 22 Order, is granted to and including November 1, 2004, as requested by Gulfstream.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2862 Filed 10–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-361-040]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

October 20, 2004.

Take notice that on October 18, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8.01g, reflecting an effective date of November 1, 2004.

Gulfstream states that this filing is being made in connection with a negotiated rate transaction pursuant to section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff. Gulfstream states that Original Sheet No. 8.01g identifies and describes the negotiated rate transaction, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract terms, and the contract quantity. Gulfstream also states that Original Sheet No. 8.01g includes footnotes where necessary to provide further details on the transaction listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention

or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2863 Filed 10–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–28–000]

Natural Gas Pipeline Company of America; Notice of Refund Report

October 20, 2004.

Take notice that on October 18, 2004, Natural Gas Pipeline Company of America (Natural) filed its Refund Report regarding the penalty revenues for the period December 1, 2003 through June 30, 2004 that it refunded to its customers pursuant to section 12.8 of the General Terms and Conditions (GT&C) FERC Gas Tariff, Sixth Revised Volume No. 1.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the intervention or protest date as indicated below. 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.

Intervention and Protest Date: October 27, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2859 Filed 10–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–47–000]

PB Financial Services, Inc.; Notice of Issuance of Order

October 20, 2004.

PB Financial Services, Inc. (PBFS) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for wholesale sales of energy and capacity at market-based rates. PBFS also requested waiver of various Commission regulations. In particular, PBFS requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by PBFS.

On November 10, 2003, 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 PBFS 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, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is November 1, 2004.

Absent a request to be heard in opposition by the deadline above, PBFS 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 PBFS, 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 PBFS' 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2861 Filed 10–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–5–000]

Questar Pipeline Company; Notice of Application

October 20, 2004.

Take notice that on October 12, 2004, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed an application with the Commission in Docket No. CP05–5–000 under Section 7 of the Natural Gas Act (NGA), as amended, seeking authority to construct, install, modify, and operate certain natural gas pipeline facilities which would expand Questar's interstate natural gas transmission system in Carbon and Duchesne Counties, Utah, and Rio Blanco County, Colorado, all as more fully stated in the application which is open to public inspection. The application is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-8222 or TYY, (202) 502–8659.

Questar proposes to: (1) Construct, install, and operate approximately 18.7 miles of 24-inch diameter pipeline as an extension of its existing Mainline 104 (ML 104) in Carbon County, Utah; (2) install and operate a new 6,200 horsepower (HP) compressor station, to be known as the Thistle Creek Compressor Station in Utah County, Utah; (3) install and operate a new 9,400 HP compressor station, to be known as the Blind Canyon Compressor Station, in Duchesne County, Utah; and (4) modify the existing Oak Spring Compressor Station in Carbon County, Utah, and the Greasewood Compressor Station in Rio Blanco County, Colorado, to increase the maximum allowable operating pressure on a 23.5-mile segment of Mainline 40 downstream of the proposed Blind Canyon Compressor Station.

Questar states that its proposed Southern System Expansion Project (SSXP) would enable it to transport an additional 102,000 dekatherm equivalent of natural gas per day from various receipt points on its interstate transmission system to a single delivery point at the existing ML 104/Kern River Gas Transmission Company interconnection in Goshen, Utah. Questar further states that it estimates the total construction cost of the proposed facilities is $54,600,000 and that the three contracting shippers have agreed to pay the SSXP project-specific reservation charge of $7.82712 per dekatherm per month for 100 percent of the incremental transportation capacity resulting from the proposed expansion.

Any questions regarding the application should be directed to Lenard G. Wright, Director, Federal Regulation, Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145–0360 or at (801) 324–2459, (801) 324–5485 (fax), or *lenard.wright@questar.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: November 10, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2866 Filed 10–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–188–002, et al.]

Geyers Power Company, LLC, et al.; Electric Rate and Corporate Filings

October 20, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Geyers Power Company, LLC

[Docket Nos. ER02–188–002, ER02–236–003, ER02–407–003]

Take notice that on October 15, 2004, Geyers Power Company, LLC (Geyers Power) submitted an amendment to its September 7, 2004 refund report in Docket Nos. ER02–188–001, ER02–236–002 and ER02–407–002 in compliance with the Commission Settlement Order issued February 27, 2003.

Geyers Power states that a copy of this filing has been mailed to all the parties.

Comment Date: 5 p.m. Eastern Time on November 5, 2004.

2. KeySpan Generation LLC

[Docket No. ER04–112–003]

Take notice that, on October 18, 2004, KeySpan Generation LLC (KeySpan) submitted a compliance filing pursuant to the Commission's order issued October 1, 2004 in Docket No. ER04–112–000, 109 FERC ¶61,011.

KeySpan Generation LLC 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 November 8, 2004.

3. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER04–691–009, EL04–104–008, ER04–106–002]

Take notice that on October 18, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing pursuant to the Commission's order issued September 16, 2004, *Midwest Independent Transmission System Operator, Inc.,* 108 FERC ¶61,236 (2004). Midwest ISO requests a waiver of the service requirements set forth in 18 CFR 385.2010.

Midwest ISO has electronically served a copy of this filing, with its attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. Midwest ISO futher states that it will provide hard copies to any interested party upon request.

Comment Date: 5 p.m. Eastern Time on November 8, 2004.

4. ISO New England Inc.

[Docket No. ER04–749–001]

Take notice that on October 15, 2004, ISO New England Inc. (ISO) submitted changes to its Capital Funding Tariff in compliance with the May 27, 2004 order issued in Docket No. ER04–749–000.

Comment Date: 5 p.m. Eastern Time on November 5, 2004.

5. Florida Power & Light Company

[Docket No. ER04–1034–001]

Take notice that on October 15, 2004, Florida Power & Light Company (FPL) submitted a compliance filing pursuant to the Commission's September 16, 2004 Order in Docket No. ER04–1034–000 on FPL's Order No. 2003–A compliant standard large generator interconnection procedures and agreement.

FPL states that it has served a copy of this compliance filing on all parties in this proceeding.

Comment Date: 5 p.m. Eastern Time on November 5, 2004.

6. Niagara Mohawk Power Corporation

[Docket No. ER05–47–000]

Take notice that on October 15, 2004, Niagara Mohawk Power Corporation, a National Grid company (Niagara Mohawk), submitted for filing an Interconnection Service Agreement between Niagara Mohawk and Cedars Rapids Transmission Company Limited. Niagara Mohawk requests an effective date of September 17, 2004.

Niagara Mohawk states that a copy of this filing will be served upon CRT, as well as the New York Independent System Operator, Inc., and the New York Public Service Commission.

Comment Date: 5 p.m. Eastern Time on November 5, 2004.

7. Ameren Services Company

[Docket No. ER05–49–000]

Take notice that on October 15, 2004, Ameren Services Company (Ameren), on behalf of Union Electric Company dba AmerenUE and Central Illinois Public Service Company dba AmerenCIPS, submitted a revised Schedule 4A, Illinois Retail Energy Imbalance Service, to the Open Access Transmission Tariff of the Ameren Operating Companies. Ameren Operating Companies' FERC Electric Tariff, Second Revised Volume No. 1. Ameren states that it proposes to eliminate the Schedule 4A capacity charge and to reduce the Schedule 4A energy charge.

Ameren states that it has served a copy of this filing on all current customers under Schedule 4A and on the Illinois Commerce Commission and the Missouri Public Service Commission. Ameren states that it has also posted a copy of the filing on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading Filings to FERC and has made a copy available for public inspection in its main offices in St. Louis, Missouri.

Comment Date: 5 p.m. Eastern Time on November 5, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER05–50–000]

Take notice that on October 15, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement among PJM, PSEG Nuclear LLC, and Exelon Generation Company, LLC, and Public Service Electric and Gas Company, Atlantic City Electric Company, Delmarva Power & Light Company, and PECO Energy Company, and a notice of cancellation of an interconnection service agreement that has been superseded. PJM requests an effective date of September 16, 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 November 5, 2004.

9. Quiet Light Trading, LLC

[Docket No. ER05–51–000]

Take notice that on October 15, 2004, Quiet Light Trading, LLC (QLT) petitioned the Commission for acceptance of QLT Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: 5 p.m. Eastern Time on November 5, 2004.

10. New England Power Pool

[Docket No. ER05–52–000]

Take notice that on October 15, the New England Power Pool (NEPOOL) Participants Committee and ISO New England, Inc. jointly filed the Hydro-Quebec Interconnection Capability Credit values established by NEPOOL for NEPOOL's 2005/2006 Power Year, which begins on June 1, 2005. NEPOOL requests an effective date of June 1, 2005.

NEPOOL states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. Eastern Time on November 5, 2004.

11. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket Nos. ER05–53–000, ER98–4289–003]

Take notice that on October 18, 2004, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing with the Commission an updated market analysis pursuant to the Commission's Order issued on October 16, 1998 authorizing market based rate authority and revisions to market-based tariff.

Montana-Dakota states that copies of the filing have been provided to the Montana Consumer Counsel, Montana Public Service Commission, North Dakota Public Service Commission, South Dakota Public Utilities Commission, and Wyoming Public Service Commission.

Comment Date: 5 p.m. Eastern Time on November 8, 2004.

12. Western Systems Power Pool, Inc.

[Docket No. ER05–54–000]

Take notice that on October 18, 2004, the Western Systems Power Pool, Inc. (WSPP) submitted a request to amend the WSPP Agreement to make clerical revisions to its membership list and to reflect the recent membership of Calpine Energy Management, L.P. (Calpine). WSPP requests an effective date of October 18, 2004.

WSPP states that copies of this filing will be electronically served upon WSPP members who have supplied email addresses for the Contract Committee and Contacts lists. WSPP also states that a copy of this filing will also be served upon Calpine. WSPP further states that this filing also has been posted on the WSPP homepage (*http://www.wspp.org*) thereby providing notice to all WSPP members.

Comment Date: 5 p.m. Eastern Time on November 8, 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 and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2872 Filed 10–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–77–001]

Puget Sound Energy, Inc.; Notice of Technical Conference

October 20, 2004.

Parties are invited to attend a technical conference in the above-referenced Puget Sound Energy, Inc. (Puget) proceeding on Tuesday November 9, 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.

The purpose of the conference is to identify the issues raised in this proceeding, develop information for use by Commission staff in preparing an order on Puget's October 10, 2003 request for rehearing of the Commission's September 11, 2003 Order,[1] and to facilitate any possible settlements in this proceeding. Specifically, the parties will discuss, among other things, Puget's request for clarification that the Commission's September 11, 2003 Order authorizes the following: (1) Puget will provide wholesale transmission service over the facilities described as transmission facilities in its petition for declaratory order (Petition) under Puget's Open Access Transmission Tariff (OATT), at the rates approved in the Commission's February 15, 2002 order;[2] (2) Puget will provide ''wholesale distribution'' service over the facilities described as ''distribution'' in its Petition (primarily facilities 34.5 kV to 115 kV) at the rates and terms of service approved in the February 15 Order; (3) Puget will provide unbundled retail transmission service over the facilities described as transmission facilities in Puget's Petition to customers participating in its state-approved retail access program, at OATT rates, in accordance with the service agreements accepted by the Commission in Docket No. ER01–2149;[3] (4) Puget will provide ''unbundled retail distribution service'' over the facilities described as ''distribution'' in Puget's Petition (primarily facilities 34.5 kV to 115 kV) to customers participating in its state-approved retail access program at the rates and terms of service approved by the Washington Utilities and Transportation Commission (WUTC); and (5) Puget will continue to account for its transmission and ''local distribution'' facilities as proposed in Docket ER02–605; that filing was accepted in part in the February 10 Order.

Questions about the conference should be directed to: Sarah H. McWane, Office of the General Counsel—Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8372, *Sarah.McWane@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2860 Filed 10–26–04; 8:45 am]

BILLING CODE 6717–01–P

[1] *Puget Sound Energy, Inc.*, 104 FERC ¶61,272 (2003) (September 11 Order).

[2] Puget Sound Energy, Inc., 98 FERC ¶ 61,168 at 61,622 (2002) (February 15 Order), *reh'g denied*, 99 FERC ¶ 61,134 (2002).

[3] Those service agreements were accepted for filing by Commission letter order on July 11, 2001.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7830–5]

Request for Applications for the National Environmental Education Advisory Council; Due Date: January 31, 2005

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 9(a) and (b) of the National Environmental Education Act

of 1990 (Public Law 101–619) mandates a National Environmental Education Advisory Council. The Advisory Council provides advice, consults with, and makes recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters relating to the activities, functions, and policies of EPA under the Act. EPA is requesting nominations of candidates for membership on the Council. The Act requires that the Council be comprised of eleven (11) members appointed by the Administrator of EPA. Members represent a balance of perspectives, professional qualifications, and experience.

DATES: Applications to fill all of the identified vacancies on the Council for 2005 must be submitted no later than January 31, 2005. The application must include the following:

- Name/address/phone/e-mail of applicant;
- 1–2 page resume (Please detail environmental education experience.);
- Two (2) letters of support for the applicant;
- One (1) page statement by the applicant on his/her personal perspective on environmental education. This must not exceed one (1) page.

Please note that meetings will be held subject to availability of funds.

ADDRESSES: Submit nominations to Ginger Potter, Designated Federal Official, Office of Environmental Education, Office of Public Affairs (1704A) U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ginger Potter at the above address, or call (202) 564–0453; E-mail address: *potter.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act specifies that members must represent the following:

- Primary and secondary education (one of whom shall be a classroom teacher)—two members;
- Colleges and universities—two members; Not-for-profit organizations involved in environmental education—two members;
- State departments of education and natural resources—two members;
- Business and industry—two members;
- Senior Americans—one member.

Members are chosen to represent various geographic regions of the country, and the Council strives for a diverse representation. The professional backgrounds of Council members should include education, science, policy, or other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period. Members are expected to participate in up to two (2) meetings per year and monthly or more conference calls per year. Members of the Council shall receive compensation and allowances, including travel expenses, at a rate fixed by the Administrator.

As of January 1, 2005, there will be five (5) vacancies on the Advisory Council that must be filled:

- Business and Industry—one vacancy (2005–2008);
- College and University—two vacancies (2005–2008);
- I11sbull State Department of Education'one vacancy (2005–2008);
- Primary and Secondary Education—one vacancy (2005–2008);

EPA particularly seeks candidates with demonstrated experience and/or knowledge in any of the following environmental education issue areas:

- Integrating environmental education into state and local education reform and improvement;
- State, local and tribal level capacity building;
- Cross-sector partnerships; leveraging resources for environmental education;
- Design and implementation of environmental education research
- Professional development for teachers and other education professionals; and
- Targeting under-represented audiences, including low-income and multi-cultural audiences, senior citizens, and other adults.

Additional Considerations:

The Council is looking for individuals who demonstrate the following:

- Ability to make the time commitment;
- Strong leadership skills;
- Strong analytical and writing skills;
- Ability to stand apart and evaluate programs in an unbiased fashion;
- Team players;
- Conviction to follow-through and to meet deadlines;
- Ability to review items on short notice.

The Council provides the Administrator with advice and recommendations on EPA implementation of the National Environmental Education Act. In general, the Act is designed to increase public understanding of environmental issues and problems, and to improve the training of environmental education professionals. EPA will achieve these goals, in part, by awarding grants and/or establishing partnerships with other Federal agencies, state and local education and natural resource agencies, not-for-profit organizations, universities, and the private sector to encourage and support environmental education and training programs. The Council is also responsible for preparing a national biennial report to Congress that will describe and assess the extent and quality of environmental education, discuss major obstacles to improving environmental education, and identify the skill, education, and training needs for environmental professionals.

Dated: October 15, 2004.

CeCe Kremer,

Deputy Associate Administrator, Office of Public Affairs.

[FR Doc. 04–24043 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7830–7]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held October 26–28, 2004 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The Science and Regulatory Work Groups will meet Tuesday, October 26; Plenary sessions will take place Wednesday, October 27 and Thursday, October 28.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The Science and Regulatory Work Groups will meet Tuesday October 26 from 9 a.m. to 5 p.m. The plenary CHPAC will meet on Wednesday, October 27 from 9 a.m. to 5 p.m., with a public comment period

at 5:15 p.m., and on Thursday, October 28 from 8:30 a.m. to 12:30 p.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and a presentation on EPA's Children's Health Centers. Other potential agenda items include a presentation on children's health indicators and FQPA implementation.

Dated: October 18, 2004.

William Sanders,

Acting Designated Federal Official.

Children's Health Protection Advisory Committee

Hotel Washington, 515 15th Street, NW., Washington, DC 20004–1099, October 26–28, 2004.

Draft Agenda

Tuesday, October 26, 2004

Work Group Meetings

Wednesday, October 26, 2004

Plenary Session

8:30 Coffee
9 Welcome, Introductions, Review Meeting Agenda
9:10 Highlights of Recent OCHP Activities
9:30 Remarks from Steve Johnson
10:30 Break
10:45 Science Workgroup Report
11:45 Presentation: EPA Briefing on Children's Health Centers
12:30 Lunch (on your own)
1:45 Regulatory Work Group Report
3:30 Break
3:45 Presentation: Update on Children's Health Indicators
5:15 Public Comment
5:30 Adjourn

Thursday, October 27, 2004

8 Coffee
8:30 Discussion of Day One
8:45 Discuss and Agree on Recommendation Letters and Other Action Items
10:15 Break
10:30 Presentation: FQPA Implementation
12:15 Wrap Up/Next Steps
12:30 Adjourn Plenary

[FR Doc. 04–24119 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0247; FRL–7673–5]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by April 25, 2005, for EPA Registration Number(s): 241–239, 241–266, and 241–354, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than April 25, 2005.

FOR FURTHER INFORMATION CONTACT: Jacqueline Guerry, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460–0001; telephone number: (703) 305–0024; e-mail address: *guerry.jacqueline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0247. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 241–239, 241–266, and 241–354, pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
241–239	Avenge Technical Herbicide	Difenzoquat
241–266	Avenge Wild Oat Herbicide	Difenzoquat
241–354	Avenge SG Wild Oat Herbicide	Difenzoquat

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
241	BASF 3000 Continental Drive - North Mount Olive, NJ 07828–1234

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before April 25, 2005. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data-Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 8, 2004.

Debra Edwards,

Director, Special Review and Registration Division, Office of Pesticide Programs.

[FR Doc. 04–23837 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0376; FRL–7679–9]

Carbaryl Interim Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Interim Reregistration Eligibility Decision (IRED) for the N-methyl carbamate pesticide carbaryl, and opens a public comment period on this decision. The Agency's risk assessments and other related documents also are available in the Carbaryl Docket. Carbaryl is an insecticide registered for use on agricultural crops, ornamentals, and turf (sod farms). Carbaryl is used by the U.S. Department of Agriculture (USDA) for grasshopper control. Carbaryl is also registered for residential use for flea control on pets and for use in homes and gardens. EPA has reviewed carbaryl through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0376, must be received on or before December 27, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Anthony Britten, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8179; fax number: (703) 308–8005; e-mail address: *britten.anthony@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0376. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related

to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0376. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0376. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0376.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2003–0376. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket

or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA completed an IRED for the N-methyl carbamate pesticide carbaryl on June 30, 2003, and is now issuing this document for public comment. Carbaryl is an insecticide registered for use on agricultural crops, sod, and for residential use on pets and in homes and gardens. Carbaryl is also used by USDA for grasshopper control. The Carbaryl IRED presents the Agency's conclusions on the risks posed by exposure to carbaryl alone; however, section 408(b)(2)(D)(v) of the Federal Food, Drug, and Cosmetic Act (FFDCA) directs the Agency also to consider available information on the cumulative risk from substances sharing a common mechanism of toxicity. Because the N-methyl carbamate pesticides share a common mechanism of toxicity, cholinesterase inhibition, the Agency will evaluate the cumulative risk posed by this group before making final reregistration eligibility decisions on individual N-methyl carbamates.

During the pendency of the carbamate cumulative assessment, the Agency is proceeding with risk assessments and interim risk management for individual carbamate pesticides. EPA has determined that, but for the cumulative risk assessment, the data base to support carbaryl reregistration is substantially complete and that products containing carbaryl will be eligible for reregistration, provided the risks are mitigated in the manner described in the IRED. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the IRED or as a result of product specific data), and after assessing N-methyl carbamate cumulative risks, EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing carbaryl. When the Agency finalizes decisions for carbaryl and other N-methyl carbamate pesticides, further risk mitigation may be required for carbaryl.

Although the Carbaryl IRED was signed on June 30, 2003, certain components of the document, which did not affect the final regulatory decision, were undergoing final editing at that time. These components, including the list of additional generic data requirements, summary of labeling changes, appendices, and other relevant information, have been added to the Carbaryl IRED document. In addition, subsequent to signature, EPA identified several minor errors and ambiguities in the document. Therefore, for the sake of accuracy, EPA also has included the appropriate error corrections, amendments, and clarifications. All of these changes are described in detail in an errata memorandum which is included in the public docket for carbaryl.

Following signature of the IRED, EPA received new pharmacokinetic data from BayerCrop Science to refine the risk estimates from residential lawn broadcast applications of carbaryl liquid formulations. They also submitted a proposed method for using the data in a deterministic calculation of the risks. EPA is planning to seek independent scientific review of this information through a Scientific Advisory Panel meeting in December 2004. The new data and EPA's preliminary review of the data are included in the docket also.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely reregistration decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Through the Agency's public participation process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for carbaryl. The Agency is issuing the carbaryl IRED for public comment. The comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the IRED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency docket for carbaryl. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date. If any comment significantly affects the document, EPA will publish an amendment to the IRED in the **Federal Register**. In the absence of substantive comments requiring changes, the risk management decisions reflected in the carbaryl IRED will be implemented without further notice. These decisions may be supplemented by further risk mitigation measures when EPA considers its cumulative assessment of the N-methyl carbamate pesticides.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended in 1988 and 1996, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product

specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 21, 2004.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–24038 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP2004–0338: FRL–7683–7]

Cancellation of Pesticides for Non-payment of Year 2004 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October, 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for 1,177 registrations. Section 4(i)(5)(G) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all 1,177 of these registrations have been issued within the past few days.

FOR FURTHER INFORMATION CONTACT: For further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (7504C), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (703) 305–6426; e-mail address: jamula.john@epa.gov

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this apply to me?

You may be potentially affected by this notice if you are an EPA registrant with any approved product registration(s). Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get additional information or copies of support documents

1. *Electronically.* You may obtain electronic copies of this document and various other related documents that might be available from the EPA Internet Home Page at http://www.epa.gov/fedrgstr/.

The Agency has established an official record record for this Action under docket control number OPP–2004–0338. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). The official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information that is claimed as CBI. The public version of the official record, which includes printed paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Introduction

Section 4(i)(5) of FIFRA as amended in October, 1988 (Public Law 100–532), December, 1991 (Public Law 102–237), and again in August, 1996 (Public Law 104–170), requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 149 minor agricultural use registrations at the request of the registrants.

In fiscal year 2004, maintenance fees were collected in two billing cycles. During the first cycle, the Agency was operating under a continuing resolution which authorized the Agency to collect $21.5 million. In late December 2003, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Recipients of these initial bills were also notified that a second final bill would also be issued if the Agency's Appropriations Bill authorized collection of more than $21.5 million. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-February to companies who did not respond and to companies who responded, but paid for less than all of their registrations.

The Pesticide Registration Improvement Act (PRIA) was passed by Congress in January, 2004. PRIA became effective in March, 2004 and authorized the Agency to collect $26 million in maintenance fees in fiscal year 2004. To collect the additional $4.5 million, the Agency initiated a second billing in early May. Final payments were due on June 15, 2004.

Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 15,238 section 3 registrations, or about 94 percent of the registrations on file in December. Fees have been paid for about 2,339 section 24(c) registrations, or about 86 percent of the total on file in December. Cancellations for non-payment of the maintenance fee affect about 883 section 3 registrations and about 294 section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2005, one year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product

which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-payment

Table 1 below lists all of the Section 24(c)registrations, and Table 2 Lists all of the Section 3 registrations which were canceled for non-payment of the 2004 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

SLN no.	Product Name
051936 AL–02–0008	Acephate 75SP
004581 AL–81–0009	Hydrothol 191
000100 AL–95–0005	Reflex 2lC Herbicide
000352 AL–97–0004	Dupont Krenite S Brush Control Agent
000100 AL–98–0003	Tilt Fungicide
000100 AL–99–0004	Warrior T Insecticide
001812 AL–99–0005	Atrapa UV
000352 AR–03–0005	Dupont Krenite S Brush Control Agent
000279 AR–03–0007	Aim EC
003125 AR–81–0044	Monitor 4
000100 AR–95–0011	Reflex 2lC Herbicide
000100 AR–96–0008	Fusilade DX Herbicide
000352 AR–98–0005	Dupont Krenite S Brush Control Agent
000100 AR–99–0002	Tilt Fungicide
001812 AR–99–0006	Atrapa UV
000241 AZ–00–0003	Acrobat MZ Fungicide
000352 AZ–02–0007	Dupont Staple Herbicide
000352 AZ–02–0008	Dupont Staple Plus Herbicide
000100 AZ–87–0022	Eptam 7-E Selective Herbicide
000100 AZ–93–0004	Eptam 7-E
000279 AZ–93–0014	Thiodan 2 C.O. EC
000100 AZ–95–0001	Eptam (r) 20. G Granules
073318 CA–00–0004	Pro-Gibb 4% Liquid Concentrate
050534 CA–02–0013	Daconil 720 Flowable Fungicide
003125 CA–03–0002	Merit 2
000279 CA–76–0115	Thiodan 3 E.C.
036029 CA–77–0496	Wilco Gopher Getter Type 2 Bait
036029 CA–77–0497	Wilco Ground Squirrel Bait
002935 CA–78–0228	Red-Top Dusting Sulfur
011168 CA–79–0025	Rodent Bait Diphacinone Treated Grain (0.005%)
059623 CA–79–0044	Stauffer Vapam 4-S Soil Fumigant Solution
063223 CA–79–0058	Imidan 50-WP Agricultural-Insecticide-Wettable Powder
002935 CA–79–0112	Red-Top Dusting Sulfur
011179 CA–83–0044	Ronilan Fungicide 50W
007501 CA–85–0026	Gustafson Pro-Gro Dust Seed Protectant
005481 CA–86–0001	Vapam Soil Fumigant Solution for All Crops
000279 CA–86–0035	Thiodan 3 E.C.
003404 CA–87–0044	Clorox
000279 CA–90–0031	Thiodan 3 E.C.
000400 CA–94–0004	Dimilin 25 W for Cotton/Soybean
005481 CA–96–0005	Dibrom 8 Emulsive
066233 CA–96–0015	Eptam 7-E Selective Herbicide
003125 CA–98–0008	Merit 1 G Greenhouse and Nursery Insecticide
000432 CT–03–0001	Maxforce TMS
000100 DE–96–0002	Gramoxone Extra Herbicide
000100 DE–98–0002	Tilt Fungicide
000100 DE–99–0001	Dual Magnum Herbicide
001812 FL–00–0013	Atrapa ULV
075353 FL–02–0003	Ecolyst
000100 FL–80–0024	Aatrex 4l Brand Atrazine/Season-Long Weed Cont. In Corn
003240 FL–86–0003	Tomcat Rat and Mouse Bait
005481 FL–89–0003	Dibrom 14 Concentrate
060182 FL–95–0002	Enstar II Insect Growth Regulator (enstar 5E)
068660 FL–98–0004	M-70 Technical Hydrogen Peroxide
000279 GA–03–0004	Aim EC
000352 GA–97–0003	Dupont Krenite S Brush Control Agent
000100 GA–98–0005	Warrior T Insecticide
000100 HI–01–0002	Cyclone Concentrate/gramoxone Max
000100 HI–01–0003	Cyclone Concentrate/gramoxone Max
000241 HI–02–0003	Amdro Fire Ant Insecticide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000241 HI–02–0009	Amdro Fire Ant Insecticide
063210 HI–77–0010	D-Z-N Diazinon 50w Insecticide
000279 HI–88–0008	Thiodan 50WP Insecticide
000100 HI–92–0005	Logic Fire Ant Bait
062719 HI–93–0010	Lorsban 50W
062719 HI–93–0011	Lorsban 50W Insecticide In Water Soluble Packets
000100 HI–97–0008	Eptam 7-E Selective Herbicide
000100 HI–97–0009	Eptam (r) 20-G Granules
000279 HI–98–0002	Thiodan 3 E.C. Insecticide
000100 HI–99–0001	Abound Fungicide
005481 ID–00–0008	Win-Flo 4F
001812 ID–00–0011	Declare
000279 ID–02–0012	Thiodan 3 EC Insecticide
000279 ID–02–0013	Thiodan 3 EC Insecticide
000279 ID–02–0014	Thiodan 3 EC Insecticide
001812 ID–02–0025	Atrapa 5E
001812 ID–02–0026	Atrapa 8E
001812 ID–02–0027	Atrapa 8E
000400 ID–03–0011	Comite Agricultural Miticide
002935 ID–81–0044	Ben-Sul 60 Dust
000279 ID–87–0013	Thiodan 3 EC Insecticide
000279 ID–89–0009	Thiodan 3 EC Insecticide
000352 ID–96–0009	Dupont Accent SP Herbicide
000100 ID–97–0007	Eptam 7-E Selective Herbicide
000279 ID–97–0009	Thiodan 3 E.C. Insecticide
000100 ID–99–0008	Abound Flowable Fungicide
045728 IN–97–0001	Carbamate WDG (ferbam Granuflo)
000279 KS–03–0005	Aim EW
000100 KS–98–0002	Tilt Fungicide
000100 KS–98–0003	Aatrex 4L Herbicide
000100 KS–99–0008	Tilt Fungicide
000279 KY–03–0008	Aim EW
000279 KY–04–0008	Aim EW
045728 KY–94–0001	Ferbam Granuflo
000100 KY–99–0001	Dual Magnum Herbicide
000100 KY–99–0002	Dual Magnum Herbicide
073848 LA–01–0001	Baytex Liquid Concentrate Insecticide
000100 LA–01–0004	Cyclone Concentrate/gramoxone Max
000352 LA–03–0002	Dupont Krenite S Brush Control Agent
000279 LA–03–0007	Aim 2 EC
002217 LA–94–0006	Acme Hi-Dep Herbicide
000100 LA–95–0002	Fusilade DX
000279 LA–95–0010	Dragnet FT Termiticide
000100 LA–95–0013	Fusilade DX Herbicide
000279 LA–96–0013	Biflex TC Termiticide
000241 LA–97–0006	Thimet 20-G Soil & Systemic Insecticide
000352 LA–97–0008	Dupont Krenite S Brush Control Agent
001812 LA–98–0002	Direx 4L
001812 LA–98–0003	Direx 80DF
001812 LA–99–0005	Atrapa UV
000432 LA–99–0014	Termidor(r) SC Insecticide
005481 MD–81–0023	Dibrom Concentrate
000100 ME–95–0007	Gramoxone Extra Herbicide
033560 ME–95–0008	Pronone 10G
000100 ME–98–0004	Gramoxone Extra Herbicide
004581 MI–03–0001	Topsin M WSB
073545 MI–86–0001	Topsin M 70 W
059639 MI–93–0003	Monitor 4 Spray
000100 MN–90–0004	Gramoxone Extra Herbicide
000100 MN–95–0005	Fusilade DX Herbicide
000100 MN–99–0015	Warrior T Insecticide
000279 MO–03–0003	Aim EC
000279 MO–03–0004	Aim EW
072871 MO–99–0003	Baytex Liquid Concentrate Insecticide
000100 MO–99–0004	Warrior T Insecticide
071532 MS–01–0002	LG Permethrin 3.2 Termiticide/Insecticide
000100 MS–01–0008	Touchdown 5 Herbicide
000100 MS–01–0010	Gramoxone Extra Herbicide
004787 MS–01–0036	Glyfos X-TRA
000279 MS–03–0006	Aim 2 EC
000279 MS–81–0035	Thiodan 3 E.C.
000279 MS–81–0036	Thiodan 50WP Insecticide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
059639 MS–89–0011	Orthene 75 S Soluble Powder
001448 MS–89–0018	Busan 1132
001386 MS–95–0002	2,4-D Amine Weed Killer
000100 MS–95–0008	Eptam 7-E Selective Herbicide
003125 MS–96–0011	Premise 75 Insecticide
000279 MS–97–0002	Biflex TC Termiticide
000279 MS–97–0004	Dragnet FT Termiticide
000352 MS–97–0011	Dupont Krenite S Brush Control Agent
000100 MT–00–0004	Mertect LSP Fungicide
000100 MT–00–0013	Fulfill
000279 MT–03–0002	Thiodan 3 EC Insecticide
000279 MT–03–0003	Thionex 50W Insecticide
000279 MT–87–0002	Thiodan 50WP Insecticide
000279 MT–87–0003	Thiodan 3 E.C.
002935 MT–94–0002	Wilbur-Ellis Potato Seed Dust T
000100 MT–95–0004	Fusilade Dx Herbicide
000100 MT–95–0006	Warrior Insecticide
000100 MT–99–0006	Dividend XL
000100 MT–99–0014	Dividend XL RTA
000279 NC–00–0004	Thiodan 3 EC Insecticide
068660 NC–03–0001	Pak 27
000279 NC–03–0006	Aim EC
000524 ND–02–0012	Roundup Herbicide
000100 ND–99–0010	Warrior T Insecticide
000279 NE–03–0006	Aim EW Herbicide
007501 NJ–94–0001	Gustafson Pro Gro Seed Protectant
000100 NJ–96–0009	Gramoxone Extra Herbicide
007501 NJ–99–0009	Pro-Gro Dust Seed Protectant
001812 NM–99–0001	Atrapa UV
001812 NV–01–0002	Atrapa 5E
001812 NV–01–0003	Atrapa 8E
000279 NV–02–0002	Thiodan 3 EC Insecticide
065343 NV–03–0002	Super Six Liquid Sulfur
010163 NV–03–0003	Savey 2E
000279 NV–86–0005	Thiodan 3 E.C. Insecticide
000100 NV–91–0003	Gramoxone Extra Herbicide
010163 NV–94–0005	Metasystox-R Spray Concentrate
000100 NV–97–0004	Eptam 7-E Slelective Herbicide
000432 NY–92–0003	Scourge Insecticide with SBP-1382/PBO 18+54% MF Form.II
005481 NY–94–0006	Dibrom Concentrate
005481 NY–97–0005	Trumpet EC Insecticide
000100 NY–97–0010	Reward Aquatic and Noncrop Herbicide
059639 OH–00–0006	Orthene 97 Pellets
000279 OH–03–0005	Aim EW
001448 OH–90–0003	Busan 77
001448 OH–90–0004	Busan 77
045728 OH–94–0004	Ferbam Granuflo
045728 OH–99–0004	Carbamate Wdg Fungicide
000279 OK–03–0003	Aim EC Herbicide
000279 OK–04–0003	Aim EC Herbicide
004581 OK–81–0023	Accelerate A Harvest Aid for Cotton
045639 OR–00–0003	Ignite 1SC Herbicide
000241 OR–00–0008	Prowl 3.3 EC Herbicide
000352 OR–00–0013	Dupont Oust Herbicide
010163 OR–00–0018	Rubigan E.C.
005481 OR–00–0019	Win-Flo 4F
001812 OR–01–0020	Direx 4L
001812 OR–01–0021	Direx 80DF
066222 OR–01–0025	Galigan 2E
000100 OR–02–0014	Abound Flowable Fungicide
000352 OR–02–0015	Oust XP Herbicide
000241 OR–03–0003	Raptor Herbicide
003125 OR–03–0005	Stratego Fungicide
000400 OR–03–0025	Comite Agricultural Miticide
007946 OR–03–0028	Imicide
000279 OR–77–0042	Thiodan 50WP Insecticide
000279 OR–77–0043	Thiodan 3 E.C.
000100 OR–79–0077	Aatrex Nine-O Herbicide
000279 OR–83–0026	Furadan 15 G Insecticide-Nematicide
004581 OR–87–0004	Des-I-Cate
034704 OR–88–0010	Diazinon 500-AG
000400 OR–88–0013	Dimilin 25W for Cotton/soybean

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
034704 OR–89–0005	Clean Crop Phorate 20g
060217 OR–91–0012	Sprout Nip Emulsifiable Concentrate
034704 OR–92–0007	Clean Crop Low Vol 6 Ester Weed Killer
000352 OR–92–0016	Du Pont Sinbar Herbicide
034704 OR–92–0024	Aceto Simazine 4l Flowable Herbicide
034704 OR–93–0003	Niagara Supreme Oil Code 30497
034704 OR–95–0010	Clean Crop Atrazine 90WDG Turf & Conifer Herbicide
000524 OR–95–0022	Ramrod Flowable Herbicide
045728 OR–95–0035	Ferbam Granuflo
000279 OR–96–0004	Thiodan 3 E.C. Insecticide
034704 OR–96–0010	Clean Crop Low Vol 6 Ester Weed Killer
000352 OR–96–0029	Dupont Accent SP Herbicide
034704 OR–97–0010	Salvo Low Volatile Weed Killer
002935 OR–97–0011	Nubark Mancozeb/TBZ Potato Seed Protectant
000100 OR–97–0014	Eptam 7-E Selective Herbicide
034704 OR–98–0007	Clean Crop Dimethoate 400
000279 OR–98–0008	Thiodan 3 EC Insecticide
001812 OR–99–0005	Direx 80DF
000100 OR–99–0029	Warrior T Insecticide
000100 PA–96–0004	Gramoxone Extra Herbicide
074033 PR–01–0001	Avaunt Insecticide
003125 RI–97–0002	Merit 0.5 G Insecticide
000100 RI–98–0001	Devrinol 10G Selective Herbicide
000279 SC–03–0009	Aim EC Herbicide
000100 SC–94–0001	Reflex 2lC Herbicide
000352 SC–97–0006	Dupont Krenite S Brush Control Agent
000100 SD–99–0005	Warrior T Insecticide
000100 TN–93–0007	Ordram 15-G
004581 TN–94–0002	Aquathol K
000100 TN–98–0004	Tilt Fungicide
000352 TN–98–0005	Dupont Krenite S Brush Control Agent
000100 TN–99–0005	Karate Insecticide
000279 TX–03–0007	Aim 2 EC
000100 TX–90–0009	Gramoxone Extra Herbicide
000100 TX–96–0005	Cyclone Herbicide
000352 TX–98–0007	Dupont Krenite S Brush Control Agent
007969 TX–99–0011	Facet 75 DF Herbicide
007969 TX–99–0017	Facet 75 DF Herbicide
033691 UT–03–0002	Perma Guard Garden and Plant Insecticide D-21
000100 UT–96–0002	Warrior Insecticide
000100 UT–97–0001	Eptam 7-E Selective Herbicide
064025 VA–83–0017	Amchem Ethrel Plant Regulator
000100 VA–94–0012	Gramoxone Extra Herbicide
000100 VA–96–0001	Devrinol 50-Df Selective Herbicide
000352 VA–98–0008	Dupont Krenite S Brush Control Agent
073269 WA–00–0007	Guthion Solupak 50% Wettable Powder Insecticide
001812 WA–00–0019	Declare
005481 WA–00–0030	Win-Flo 4F
000100 WA–01–0020	Mycoshield Brand of Agricultural Terramycin
066222 WA–01–0029	Galigan 2E
000241 WA–02–0022	Acrobat 50wp Fungicide
075758 WA–03–0008	Rex Lime Sulphur Solution
000400 WA–03–0029	Comite Agricultural Miticide
000279 WA–77–0016	Thiodan 3 E.C.
000279 WA–78–0029	Thiodan 50WP Insecticide
000279 WA–78–0033	Thiodan 50WP Insecticide
000100 WA–79–0078	Aatrex Nine-O
000100 WA–80–0083	Aatrex Nine-O
034704 WA–82–0046	Clean Crop Sulfur 6 Flowable
002935 WA–83–0012	Red-Top Diazinon 4 Spray
002935 WA–84–0052	Ben-Sul 60 Dust
000279 WA–87–0012	Thiodan 50WP Insecticide
000279 WA–87–0013	Thiodan 3 E.C.
002935 WA–88–0002	Wilbur-Ellis Copper 3 Dust
005481 WA–91–0040	Fruit Fix Super Concentrate 800
005481 WA–91–0041	Fruit Fix Concentrate 200
000352 WA–92–0024	Du Pont Sinbar Herbicide
034704 WA–93–0004	Clean Crop Low Vol 6 Ester Weed Killer
005481 WA–93–0022	Vapam Soil Fumigant Solution for All Crops
002935 WA–93–0023	Red Top Potato Seed Piece Fungicde Dust
005481 WA–93–0024	Metam Sodium
005481 WA–94–0005	Metam 426

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
045728 WA–94–0029	Ferbam Granuflo
034704 WA–95–0010	Clean Crop Atrazine 90WDG Turf & Conifer Herbicide
000524 WA–95–0031	Ramrod Flowable Herbicide
000352 WA–96–0023	Dupont Accent SP Herbicide
000100 WA–97–0002	Mefenoxam EC
000100 WA–97–0025	Eptam 7-E Selective Herbicide
034704 WA–97–0037	Clean Crop Trifluralin Hf
034704 WA–98–0003	Clean Crop Trifluralin Hf
071523 WA–98–0006	Vinco Formaldehyde Solution
065135 WA–98–0007	Vinco Formaldehyde Solution
000279 WA–98–0016	Thiodan 3 E.C. Insecticide
000100 WA–99–0024	Warrior T Insecticide
010163 WI–02–0001	Halo-Sulfuron-Methyl/Cucumber, Pumpkin*/Squash
000279 WI–02–0011	Thiodan 3 EC Insecticide
000279 WI–99–0001	Thiodan 3 EC Insecticide
003125 WY–01–0001	Sencor DF 75% Dry Flowable Herbicide
000100 WY–94–0001	Fusilade DX
000279 WY–98–0006	Furadan 4F Insecticide/nematicide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

Registration no.	Product Name
000016–00118 ..	Dragon Granular Lawn Insect Control
000016–00119 ..	Dragon 5% Diazinon Granules
000016–00157 ..	Dragon 25% Diazinon Spray
000016–00166 ..	Dragon Diazinon Water-Based Concentrate
000056–00041 ..	Eaton's Bait Blocks Rodenticide with Apple Flavorizer
000056–00044 ..	Eaton's All Weather Bait Blocks Rodenticide with Fish Flavor
000070–00124 ..	Kill-Ko Malathion Concentrate
000072–00019 ..	Miller Lime Sulfur Solution
000100–00779 ..	Dividend Mg Fungicide
000100–00802 ..	Mefenoxam
000100–00813 ..	Vangard WP Fungicide
000100–00814 ..	Dividend WS
000100–00831 ..	Banvel 720 Herbicide
000100–00832 ..	Banvel CST
000100–00877 ..	Pyridate Technical
000100–00878 ..	Banvel 10G Herbicide
000100–00880 ..	Tough 5 EC
000100–00942 ..	Adage 70WS Insecticide
000100–00994 ..	PP005 2E Herbicide
000100–01003 ..	Fusilade 2000 Herbicide
000100–01005 ..	Demon 3E Insecticide
000100–01007 ..	Demon 3 TC Insecticide
000100–01011 ..	Commodore EC Insecticide
000100–01038 ..	Clipper 2SC Tree Growth Regulator
000100–01041 ..	Touchdown Concentrate Herbicide
000100–01042 ..	Touchdown 4-LC
000100–01044 ..	Commodore WP Insecticide
000100–01045 ..	Scimitar WP Insecticide
000100–01047 ..	Touchdown Technical
000100–01048 ..	Touchdown (r) 6 Herbicide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
000100–01058 ..	Commodore WP Insecticide In Water-Soluble Packets
000100–01071 ..	Typhoon Herbicide
000100–01076 ..	Scimitar WP Greenhouse Insecticide In Water Soluble Packets
000100–01077 ..	Scimitar WP Greenhouse Insecticide
000100–01081 ..	Scimitar CS Greenhouse Insecticide
000100–01085 ..	Commodore Insecticide In Ready Mix Water Soluble Packet
000100–01089 ..	Scimitar WP Golf Course Turf Insecticide
000100–01090 ..	Scimitar WP Turf and Ornamental Insecticide
000100–01096 ..	Lambda-Cyhalothrin CS Insecticide
000100–01099 ..	Icia5504 80WG Fungicide
000100–01100 ..	Scimitar G & N Insecticide In Water Soluble Packets
000100–01108 ..	Touchdown 5 Herbicide
000100–01116 ..	Typhoon D Herbicide
000110–20001 ..	Chlor-Clean
000151–00014 ..	Pioneer Pc-30 Disinfectant Cleaner "New Improved"
000228–00099 ..	Riverdale 10% Dacthal Granules
000228–00101 ..	Riverdale Double M Insecticide Alfalfa Spray
000228–00105 ..	Riverdale Methoxychlor Emulsifiable Concentrate
000228–00157 ..	Riverdale Crabgrass Control and Fertilizer
000228–00161 ..	Riverdale Grub Out Plus Fertilizer

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
000228–00188 ..	Riverdale Rose & Floral Spray
000228–00222 ..	Riverdale 25% Dacthal Dust
000239–02364 ..	Ortho Diazinon Insect Spray
000239–02375 ..	Ortho Diazinon Granules
000239–02479 ..	Ortho Diazinon Soil & Turf Insect Control
000239–02503 ..	Ortho Diazinon Granular Fire Ant Killer
000239–02619 ..	Hi-Power Ant, Roach & Spider Spray Formula II
000239–02630 ..	Ortho Diazinon Insect Spray Ready-To-Use
000239–02643 ..	Ortho Diazinon Insect Spray 2
000239–02671 ..	Ortho Diazinon Dust
000241–00317 ..	Event Grass Growth Regulator
000241–00396 ..	Structure Residual Herbicide
000241–00406 ..	Extreme CP Herbicide
000402–00118 ..	Scorch
000421–00378 ..	Anti-Staph the Triple Threat
000432–01290 ..	Baytex Technical Insecticide
000458–00031 ..	Usol Organiclear Twenty-To-One Concentrate (water Dilutable)
000491–00008 ..	Selig's Pinetax
000491–00221 ..	Mr. Triple Zero Weed Killer
000498–00147 ..	Spraypak Wasp & Hornet Killer
000498–00153 ..	Spraypak Wasp Spray 0.25%
000499–00361 ..	Whitmire Outdoor Ornamental Insect Spray

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
000499–00454 ..	ULD BP-110 Emulsifiable Insecticide Concentrate
000499–00456 ..	ULD BP-30 Mill and Food Plant Spray
000499–00458 ..	ULD BP-5025 Insecticide
000499–00474 ..	Pro-Control Inspector IV
000506–00180 ..	Tat Multi-Purpose Insect Killer
000506–00185 ..	Tat Wasp & Hornet Killer
000539–00304 ..	Sears Roto-Belt Humidifier Bacteriostat & Water Treatment
000572–00145 ..	R0ckland Malathion 57%
000572–00181 ..	Triple "D" Lawn Weed Killer
000572–00183 ..	Rockland Malathion 50
000572–00195 ..	Rockland Professional Super Tupersan
000572–00200 ..	Rockland Garden Clean with Trifluralin
000572–00255 ..	Rockland Feed & Seed with Tupersan
000572–00273 ..	Rockland Three-Way Lawn Weed Killer
000572–00285 ..	Rockland Garden Insect Spray RTU
000572–00305 ..	Rockland Diazinon Spray
000572–00315 ..	Rockland Rotenone-Pyrethrum Insecticide
000572–00326 ..	Rockland Fly Rid
000572–00351 ..	Wasp & Yellow Jacket Bomb
000572–00354 ..	Rockland Ornamental Fungicide
000655–00028 ..	Prentox Lindane Technical Powder
000655–00556 ..	Prentox Diazinon 5G
000655–00764 ..	Prentox Chlorpyrifos 2.32G Insecticide
000655–00766 ..	Prentox Chlorpyrifos 1/2G Granular Insecticide
000655–00786 ..	Pyrifos Residual Spray
000706–00040 ..	Claire Mint Aire Air Sanitizer and Deodorizer
000706–00062 ..	Lemon Aire Air Sanitizer & Deodorizer
000706–00072 ..	Claire Golden Jet Bee Wasp & Hornet Killer
000706–00095 ..	Claire Multi-Use Insecticide Spray
000706–00096 ..	Claire Bug Buster Insect Killer
000706–00100 ..	Lice Killer
000706–00101 ..	Claire Jet Force II Wasp & Hornet Killer
000706–00103 ..	Big Jinx III Ant & Roach Killer
000706–00104 ..	Clair Big Jinx III Roach & Ant Killer
000769–00624 ..	SMCP Malathion 50%
000769–00673 ..	SMCP 5% Malathion Dust
000769–00676 ..	SMCP Malathion 25-Wp

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
000769–00677 ..	SMCP Malathion 5% Pco Dust
000769–00752 ..	PCE Malathion Ddvp Residual Spray
000769–00783 ..	Superior Malathion E-45
000769–00785 ..	Omnikill Roack and Ant Bomb
000769–00786 ..	Superior S. K. Formula
000769–00809 ..	Superior EC 5 Malathion Concentrate
000769–00850 ..	Pratt Noculate Systemic Insecticide Granular
000769–00903 ..	Science Garden Insect Spray
000769–00915 ..	Science Gladiolus & Bulb Dust
000773–00076 ..	Del-Phos Emulsifiable Liquid Insecticide
000777–00053 ..	Lysol Brand Disinfectant Spray
000784–00098 ..	Top-Quat
000802–00123 ..	Lilly/Miller Malathion
000802–00426 ..	Lilly/Miller Systemic Rose, Shrub & Flower Care
000802–00516 ..	Miller's Vegetable and Fruit Spray
000802–00564 ..	Lilly/Miller Weed & Grass Preventer
000829–00232 ..	SA-50 Brand Lawn Ormamental & Vegetable Fungicide
000829–00272 ..	SA-50 Brand Dursban Mole Cricket Bait
000833–00065 ..	AFCO Low Foam Tops
000833–00074 ..	Chlorilizer Plus
000909–00106 ..	Cooke Summer & Dormant Oil Insect Spray Concentrate
001021–00046 ..	Pyrocide Booster Concentrate H Emulsifiable
001021–00107 ..	Pyrocide* Intermediate 64
001021–00204 ..	Pyrocide Intermediate 0055
001021–00374 ..	Pyrocide Aerosol Mix No. 5258
001021–00385 ..	Pyrocide Aerosol Mix 933
001021–00426 ..	Pyrocide Aerosol Mix 5307
001021–00452 ..	Pyrocide Intermediate No. 5444
001021–00583 ..	Pyrocide Intermediate 5886
001021–00683 ..	Pyrocide Aerosol Mix No. 6210
001021–00752 ..	Pyrocide Intermediate No. 6443
001021–00774 ..	Pyrocide Formula No. 6471
001021–00853 ..	Pyrocide Aerosol Mix 6664
001021–00910 ..	Pyrocide Intermediate 6781
001021–00925 ..	Emulsifiable Synergized Pyrethrum Concentrate 6055

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
001021–01011 ..	Pyrocide Intermediate 6905
001021–01019 ..	Pyrocide Intermediate 6915
001021–01146 ..	Pyrocide Fogging Conc 7052
001021–01271 ..	Pyrocide Fogging Concentrate 7336
001021–01307 ..	Pyrocide Fogging Concentrate 7210
001021–01316 ..	Pyrocide Intermediate 5770
001021–01318 ..	Pyrocide Fogging Formula 7221
001021–01450 ..	Evercide Fenvalerate 80% Concentrate
001021–01459 ..	Pyrocide Intermediate 7340
001021–01477 ..	Evercide Intermediate 2265
001021–01480 ..	Evercide Intermediate 2274
001021–01492 ..	Evercide Intermediate 2244
001021–01502 ..	Pyrocide Fogging Formula 7349
001021–01523 ..	Evercide Residual Insecticide Concentrate 2362
001021–01528 ..	Evercide Intermediate 2338
001021–01538 ..	Evercide Concentrate 2403
001021–01539 ..	Evercide Concentrate 2414
001021–01560 ..	Multicide Fogging Concentrate 2486
001021–01561 ..	Multicide Fogging Concentrate 2487
001021–01571 ..	Pyrocide Intermediate 7387
001021–01573 ..	Multicide Concentrate 2495
001021–01580 ..	Evercide Intermediate 2494
001021–01614 ..	Clearmol Intermediate 7410
001021–01618 ..	Pyrocide Fogging Concentrate 7411
001021–01639 ..	Pyrocide Concentrate 7409
001022–00543 ..	Chapcide 4-EC
001190–00049 ..	M.G.C.
001190–00052 ..	Hospi-Tol 64
001275–00028 ..	Pine-Odor Disinfectant
001352–00060 ..	Nutrena Fly Block with Rabon Oral Larvicide
001386–00605 ..	Malathion 6 Grain Protectany
001386–00613 ..	Dursban Lawn and Ornamental Insect Control
001386–00615 ..	Termite Kill II
001386–00649 ..	Dursban 4E
001386–00652 ..	Security Pro-Turf 1 Insect Control Granules
001386–00653 ..	Security Pro-Turf 2 Insect Control Granules

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
001448–00336 ..	Vantrol Conditioner No 5
001459–00024 ..	Whirl Pool Fast Acting Emulsion Bowl Cleaner
001469–00023 ..	Pentapine Disinfectant
001677–00051 ..	X-4
001677–00187 ..	CD - 600
001706–00145 ..	Nalco 7326 Algaecide
001706–00188 ..	H-434 Microbiocide
001706–00223 ..	Veligon Cl-M
001706–00224 ..	Veligon L-M
001706–00225 ..	Veligon LS-M
001706–00227 ..	Veligon DL-M
001706–00228 ..	Veligon T-2-M
001839–00015 ..	BRC-824 (20% Active)
001839–00021 ..	BTC-824 P40
001839–00062 ..	BTC 50 Concentrate Germicide
001839–00118 ..	BTC 190
001839–00136 ..	BTC-885-P40
001839–00162 ..	BTC 885-P40 Detergent/Disinfectant
002288–00006 ..	408 Marine Fuel Stabilizer
002398–00007 ..	Pronto Lice, Tick and Flea Killing Spray
002686–00018 ..	Chlorosan
002693–00115 ..	Micron 22 45L Green
002693–00127 ..	Hisol BF254 Self Polishing Copolymer A/F
002693–00191 ..	Micron 33 Outdrive Spray 464A White
002724–00169 ..	Vet-Kem Kemolate Emulsifiable Liquid
002724–00487 ..	Arthitrol 0.5% Dursban Paste Bait
002733–00001 ..	Breath O'pine All Purpose Cleaner
002777–00021 ..	Indianhead Fly Killer
002935–00139 ..	Red-Top Premium Grade Malathion Grain Protectant
002935–00246 ..	Ben-Sul 60 Dust
002935–00417 ..	Wilbur-Ellis Potato Seed Dust T
002935–00419 ..	PCNB Seed-Coat
002935–00420 ..	Nusan Flowable 30
002935–00426 ..	Lorsban 30 Flowable
002935–00513 ..	Dusting Sulfur
002935–00515 ..	2,4-D Amine 6#
002935–00533 ..	Dusting Sulfur 98
003008–00022 ..	Osmose Wood Preserving Stain
003008–00035 ..	Osmose K-33 (40%) Type B Wood Preservative
003008–00036 ..	Osmose K-33-C (50%) Wood Preservative
003008–00042 ..	Osmose K-33-A (50%) Wood Preservative
003008–00059 ..	Copper Chem (AMCU)
003008–00081 ..	Noah Gold
003008–00082 ..	Noah Gold CS
003090–00177 ..	Sanitized Brand Xbh Bacteriostatic Chemicals
003276–00018 ..	A & L Al-Dine
003342–00093 ..	Grain Storage 1-M Dust

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
003342–00094 ..	Super Kill
003342–00102 ..	Security Brand Thiodan Spray
003377–00060 ..	Albemarle Ultra-80 Algicide
003377–00073 ..	Sanibrom 43
003377–00075 ..	Sanibrom 10 Algicide
003522–00012 ..	Luseaux QT-550
003522–00014 ..	Luseaux S Q 550
003522–00018 ..	Luseaux Chlo-Rins-Tabs
003536–00004 ..	H.K Mouse & Rat Bait
003838–00048 ..	Trust
003838–00052 ..	Readiquat - Tb
003862–00142 ..	D-Weed-O Formula #4
003931–00006 ..	Ancocide 4040
004000–00058 ..	Pyrethroid 351 Aqueous Pressurized Insecticide Spray
004313–00056 ..	Pine Quat Pine Odor Disinfectant
004704–00005 ..	Magic Circle Industrial Insecticide
004704–00026 ..	Magic Circle Fog Spray Conc.
004822–00482 ..	Raid Pid 1
004959–00049 ..	I-Dyne Disinfectant
005174–00018 ..	Qd Quaternary Disinfectant
005185–00488 ..	Dichloro Shock
005204–00063 ..	Biomet 300 Antifouling Agent
005204–00065 ..	Biomet 302 Antifouling Agent
005204–00067 ..	Biomet 304 Antifouling Agent
005204–00080 ..	Biomet 303/60 Antifouling Agent
005204–00081 ..	Biomet 304/60 Antifouling Agent
005204–00083 ..	Poly-Flo 4024
005204–00087 ..	Biomet 305
005204–00088 ..	Biomet 309 Antifouling Agent
005204–00090 ..	Biomet 300/60
005389–00011 ..	Mcd Powder Bleach
005389–00016 ..	Kay 10 Np (non Phosphate) Sanitizer
005389–20003 ..	Sani-Power Low Temp Warewash Sanitizer
005449–00011 ..	Ful-Trole
005625–00001 ..	Tempo Marine Outboard Outdrive Clear Anti-Fouling Paint No.
005887–00077 ..	Black Leaf Liquid Fruit Tree Spray
006148–00011 ..	Coppertone Bug & Sun Sunscreen with Insect Repellent Adult F
006482–00008 ..	Lone Star 14% Protein Hi-Pro-Min with Rabon Oral Larvicide
006621–00072 ..	Fresh Impression Anti-Bacterial Disinfecting Toilet Bowl Cleaner
006836–00194 ..	Towercide 10lF
006959–00093 ..	Cessco Crawling Insect Killer
006959–00097 ..	DDVP 5%
007001–00284 ..	Metam (soil Fumigant)

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
007001–00376 ..	Lange Brand Dimension Granules Turf Herbicide
007124–00055 ..	Tru-Clor
007124–00065 ..	Nu.Clo Quick Dissolving Chlorinating Tablets One-A-Day 20,000
007124–00066 ..	Nu-Clo Quick Dissolving Tablets Chlorinating Tablets 1-A-Day
007124–00067 ..	Nu-Clo Quick Dissolving Chlorinating Tablets
007124–00068 ..	Nu-Clo Quick Dissolving Chlorinating Tablets
007124–00071 ..	Nu-Clo 7 Day Slow Dissolving Chlorinating Tablets
007138–00012 ..	Southern States Cattle Mineral Rabon Block
007501–00029 ..	Gustafon Lorsban 50-Sl
007501–00037 ..	Gustafson Vitavax Maneb Lindane 20-35-18.75 Fungicide
007501–00044 ..	Gustafson Vitavax-Thiram 20-20
007501–00078 ..	Gustafson RTU-PCNB/Lindane Seed Protectant
007501–00095 ..	Gustafson Vitavax Pour-On Flowable Fungicide
007501–00112 ..	Vitavax-Diazinon-Lindane Seed Treatment Insecticide-Fungicide
007501–00135 ..	Gustafson Rtu Flowable Soybean Fungicide
007501–00152 ..	Enhance V-M-L
007501–00158 ..	Kodiak T Fungicide
007501–00166 ..	Rtu-Vitavax-Extra
007616–00053 ..	Cal Chlor Chlorinating Granules
007643–00007 ..	Nuchlor
007689–00014 ..	Wardley's Liquid Allclear
007689–00016 ..	Allclear II Algicide for Outdoor Fishpools
007689–00017 ..	Allclear II Aquarium Algicide
007701–00034 ..	Lanscaper Weed Killer & Prepaving Preparation
007754–00047 ..	Total Release .4 Perm
007754–00049 ..	Ari Flea & Tick Spray Formula I
007754–00052 ..	Bee Bopper III Wasp and Hornet Killer
007969–00116 ..	MCPP Amine 4
007969–00127 ..	Mecoprop AK Technical Acid
008119–00003 ..	Corry's Liquid Bug, Snail & Slug Bait
008119–00012 ..	Corry's Slug & Snail (3.5)
008119–00014 ..	Corry's Slug & Snail (3.0)
008120–00048 ..	Amercoat 698 HS
008120–00054 ..	Amercoat 3224 White Aerosol Antifoulant
008120–00065 ..	Devran 218-S-3888

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
008120–00066 ..	Abc #2 282-S-4754 Marine Antifouling Paint #2 Red
008329–00023 ..	Dursban 1/2%G
008329–00026 ..	Dursban 1% G
008370–00016 ..	N-601 Disinfectant-Sanitizer
008378–00026 ..	Shaw's Turf Food Insect Control 92/dursban
008378–00034 ..	2.32 Dursban Granules
008428–00009 ..	S-6-Klor
008429–00009 ..	Cairox ZM Free Flowing Potassium Permanganate
008596–00034 ..	Myco Curb FG
008780–00051 ..	Turf Line Diazinon 5G Lawn Insect Control
008780–00054 ..	Turf Line Diazinon Lawn Insect Control Plus Fertilizer #2
008780–00055 ..	Turf Line Diazinon Lawn Insect Control Plus Fertilizer
008780–00056 ..	Turf Line Arthroban Triple Action #4
008791–00026 ..	Tri-Chlor Slow Tabs
008791–00049 ..	E-Z Clor Hypochlor Big Tabs
008959–00001 ..	Cutrine Algaecide
009198–00016 ..	Frank S Garden King Weed and Feed
009198–00032 ..	Turf Care for Lawn Maintenance 38-0-0 with Dursban Brand Insecticide
009198–00047 ..	Andersons Weed Killer 0.84% 2.4-D and 0.84% MCPP
009198–00049 ..	Andersons Weed and Feed
009198–00053 ..	The Andersons Weed and Feed III
009198–00054 ..	Anderson's Weed and Feed II 28-3-9
009198–00084 ..	Andersons Tee Time 30-3-5 with 0.65% Dursban
009198–00127 ..	Twinlight Dursban Turf Insect Killer
009198–00132 ..	The Andersons 0.97% Dursban Brand Insecticide
009198–00170 ..	Proturf Pythium Control
009198–00185 ..	Scotts Proturf 30-4-4 Fertilizer Plus Weedgrass Preventer
009198–00193 ..	Proturf Turf Growth Regulator + Fertilizer for Sandy Soils
009198–00194 ..	Turf Growth Regulator Plus Fertilizer
009198–00195 ..	Scotts Proturf Turf Fertilizer Plus Weedgrass Control
009198–00200 ..	Fertilizer Plus Insecticide/Preemergent Weed Control
009198–00202 ..	Tgr(r) Turf Enhancer 50 WP

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
009367–00019 ..	T-C 505 Q
009367–00036 ..	Bowl-San
009386–00022 ..	AMA-3523
009409–00003 ..	Pro-San II
009444–00184 ..	CB Strikeforce Hpx II Residual with Dursban
009444–00202 ..	Strikeforce II Residual with Dursban
009561–00003 ..	Kelley's Anticoagulant Rat and Mouse Bait
009591–00163 ..	Pressurized Insecticide 550
009591–00167 ..	Mill Spray
009634–00001 ..	Alginx
009712–00006 ..	Algicide
009743–00002 ..	Microbiocide No. 8
009754–00001 ..	Tri-Kil Nonselective Weed and Grass Killer
009886–00006 ..	Unipine 75
009886–00008 ..	Unipine S-70
009886–00011 ..	Unipine 90
010079–00001 ..	J.C. Algaecide
010088–00085 ..	Surface Insecticide
010088–00094 ..	Ultra Insecticide
010133–00005 ..	National's Zeolite Algaecide NP40l
010250–00051 ..	Hempel's Antifouling Combic 7199E Red 51110
010250–00052 ..	Hempel's Antifouling Combic 71990-19990
010292–00015 ..	Pine Odor Disinfectant Cleaner
010292–00018 ..	Bowlex Bowl Sanitizer
010324–00075 ..	Lemeen
010350–00020 ..	Permethrin 20 MEC Manufacturing Use Concentrate
010350–00021 ..	MEC Permethrin Livestock Premise Spray Concentrate
010350–00041 ..	Permethrin 20 MEC Livestock Premise Spray Concentrate
010404–00015 ..	Lesco 2.32 Granular Insecticide
010404–00027 ..	Lesco Dursban(r) 0.97% Plus Fertilizer
010404–00029 ..	Lesco Dursban(r) 0.74% Plus Fertilizer
010404–00038 ..	Lesco PCNB-10% Granular Soil Fungicide
010404–00040 ..	Lesco Dursban(r) 0.42% Plus Fertilizer
010404–00053 ..	Lesco Turf Fertilizer with Team
010404–00057 ..	Lesco Turf Fertilizer with 1.25% Team
010404–00069 ..	Lesco Three-Way 53% Dg Selective Broadleaf Herbicide
010404–00081 ..	Lesco 0.97 Dursban Granules
010404–00099 ..	Lesco Deltagard T & o 0.05% Plus Fertilizer

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
010465–00025 ..	Csi 70% Sodium Dichromate Solution
010465–00026 ..	Cca Type C Wood Preservative 50%
010465–00037 ..	ACQ 2100
010465–00040 ..	ACQ 2101
010542–00002 ..	Scentinella Candel
010772–00009 ..	Lambert Kay Zenox Concentrated Shampoo for Dogs
010772–00010 ..	Zenox Flea & Tick Shampoo for Cats and Dogs
010772–00013 ..	Zenox 75 Flea & Tick Dog Shampoo
010807–00002 ..	Misty Dual Synergist Insecticide
010807–00006 ..	Misty Multi-Purpose Insecticide
010807–00007 ..	Misty Glycol Air Sanitizer-Mint Fragrance
010807–00010 ..	Misty Insect Killer
010807–00016 ..	Misty Accur-Spray Wasp & Hornet Killer
010807–00026 ..	Misty Glycol Air Sanitizer-Orange Fragrance
010807–00038 ..	Misty Mizer Air Sanitizer-Mint Fragrance
010807–00039 ..	Misty Mizer Air Sanitizer (bouquet)
010807–00046 ..	Misty Aircraft Insecticide
010807–00063 ..	Misty Fog Away
010807–00071 ..	Misty Fly-A-Way
010807–00072 ..	Misty Glycol Air Sanitizer El Capitan Fragrance
010807–00075 ..	Misty Conquest
010807–00076 ..	Misty Fog-It
010807–00083 ..	Misty Accur-Spray II Wasp & Hornet Killer
010807–00086 ..	Misty II Flying Insect Killer, .6P
010807–00087 ..	Misty P.COo. Professional Flying Insect Killer
010807–00088 ..	Misty General Purpose Flying Insect Killer
010807–00092 ..	Dual Synergist Space Spray Insecticide
010807–00093 ..	C-10 Algaecide
010807–00109 ..	Mosquito & Fly Spray
010807–00121 ..	Misty Industrial Aqueous Emulsifiable Concentrate
010807–00130 ..	Misty Liquid Disinfectant
010807–00132 ..	Citra-Clean
010807–00134 ..	Control 750
010807–00154 ..	Misty Terminate
010807–00158 ..	Amrep 5004
010807–00159 ..	Amrep 5002
010807–00163 ..	Amrep 5009
010807–00164 ..	Misty Fog Plus II
010807–00175 ..	Amtep 6000
010807–00179 ..	Wemcide CW 102
010807–00180 ..	Wemcide CW 106
010807–00193 ..	Misty Fog Off!
010897–00001 ..	Hasa Chlorinating Granules

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
010897–00016 ..	Tabit Automatic Chlorinating Cartridge
010897–00017 ..	Tabit Chlorinating Cartridge
010897–00030 ..	Hasa Dry Algaecide
010897–00035 ..	Purechlor Sanitizer 12.5%
010897–00036 ..	Purechlor Sanitizer II 10.0%
010897–00037 ..	Sani-Clor Big Tabs
010897–00038 ..	Sani-Clor Granules 2
010897–00039 ..	Spa-Kleen Granules II
010897–00040 ..	Sani-Clor Good-Bye Algae
010897–00041 ..	Sani-Clor Pool Sanitizer
010897–00042 ..	Sani-Clor Pool Sanitizer II
010897–00043 ..	Sani-Clor Sani-Pure
010897–00044 ..	Sani-Chlor Shock Treatment
010897–00045 ..	Sani-Clor Small Tabs
010900–00060 ..	871 House and Garden Insect Killer
010900–00064 ..	875 House and Garden Spray Resmethrin/ bioallethrin
010932–00008 ..	A-109 Microbiocide
010932–00011 ..	7212 Microbiocide
011440–00003 ..	Lane Weedkill N.S. No 3
011529–00012 ..	Baf-150
011623–00005 ..	Apollo Germicidal Spray Cleaner - Spray On/ Wipe Off
011623–00041 ..	Apollo Trainer Indoor/ outdoor Repellant
011623–00045 ..	Ant & Roach III
011623–00049 ..	Apollo Contact II
011623–00050 ..	Wasp & Hornet III
011623–00051 ..	Apollo CIK Spray II
011623–00052 ..	Roach Ant & Spider Killer
011649–00012 ..	Avitrol FC Corn Chops-99
011649–00013 ..	Avitrol FC Corn Chops 1-10 Concentrate
011712–00001 ..	Bact-Cide
011725–00007 ..	Tek-Trol Disinfectant Cleaner Concentrate
011725–00008 ..	Tek-Phene Cleaner-Disinfectant-Deodorant
011725–00009 ..	Opti-Phene Cleaner Disinfectant Deodorant
011725–00010 ..	Bio-Phenol 67
011725–00011 ..	Pheno-Tek II
011760–00001 ..	Edsan Q-A
011760–00003 ..	Edsan Spectrum
012020–00001 ..	Diuron Technical
012020–00002 ..	Diuron-80
012204–00005 ..	Marc 34 Marcicide
012204–00018 ..	Marc 37 Marcicide
012455–00093 ..	Bromethalin Concentrate
012477–00003 ..	CP-10
013215–00001 ..	Super-Qwik Concentrate Multi-Duty Bowl Cleaner
013215–00002 ..	Neutra Quik Concentrate Light-Duty Bowl Cleaner
013285–00001 ..	Strippette - Sanitizer
014955–00033 ..	Sms Disinfectant-Sanitizer
015440–00012 ..	Technical 2-(2,4-Dichlorophenoxy) Propionic Acid
015440–00014 ..	Marks Cmpp (mecoprop) Technical Acid
015440–00016 ..	Marks Technical Iso-Octyl Ester of 2.4-DP
015440–00017 ..	Technical Mecoprop
015440–00021 ..	Kvk MCP Acid
015440–00022 ..	Technical 2-EH Ester of Mcpa
017545–00006 ..	Weed Ender
021164–00021 ..	Akta Klor 80X
023563–00001 ..	Mur Kil
024909–00001 ..	Steri-Kleen Disinfectant
024909–00004 ..	Steri-Du Sanitizer, Disinfectant-Deodorizer
024909–00016 ..	Aqua-K Insecticide
026693–00002 ..	Killmaster II
027586–00001 ..	Tm Biocontrol-1
027586–00002 ..	Gypchek Biological Insecticide for the Gypsy Moth
027586–00005 ..	Technical MCH
028293–00087 ..	Unicorn House and Carpet Spray
028293–00099 ..	Unicorn Dursban Spray
028293–00121 ..	Unicorn Dursban - Resmethrin Spray
028293–00142 ..	Unicorn Packaging & Processing Plant Aerosol Spray
028293–00149 ..	Unicorn House and Carpet Spray II
028293–00200 ..	Unicorn Dursban 2E
028293–00201 ..	Unicorn Dursban 2.5%G Granules
028293–00202 ..	Unicorn Dursban 1.0%G Granules
028293–00203 ..	Unicorn Dursban 1%-D Dust.
028293–00204 ..	Unicorn Dursban 4E
028293–00205 ..	Unicorn Dursban 1-12
028293–00210 ..	Dursban 1-E Insecticide
028293–00265 ..	Unicorn Dursban 6.7% Insecticide
032802–00005 ..	All Season Diazinon 5G Insecticide
032802–00045 ..	All Season Sprayable Weed & Feed
032852–00013 ..	Chemcide Sba
032970–00003 ..	Ad Bac 4227
033176–00023 ..	Airysol Ant & Roach Killer
033660–00031 ..	Flutrix Five EC
033660–00033 ..	Flutrix 4EC
034269–00001 ..	Poolside Algi-Rid Concentrate
034704–00021 ..	Clean Crop Thiodan 3 EC
034704–00035 ..	Clean Crop Grain Preserver
034704–00040 ..	Clean Crop Thiram-Moly
034704–00055 ..	Clean Crop Chlorpyrifos 1/2G Turf Insecticide
034704–00057 ..	Clean Crop Diazinon 5 Lawn & Garden
034704–00065 ..	Chlorpyrifos 2E
034704–00066 ..	Clean Crop Chlorpyrifos 4E Insecticide
034704–00067 ..	Clean Crop Ziram 76 WP
034704–00106 ..	Clean Crop 4% Malathion Grain Protector
034704–00153 ..	E-Z Flo Cyprex 4 Dust
034704–00161 ..	Clean Crop Lime-Sulfur Solution
034704–00206 ..	Clean Crop 1/2 % Thiabendazole Potato Seed Piece Treater
034704–00210 ..	Clean Crop Betasan 3.6G
034704–00249 ..	Clean Crop Oftanol 1.5G
034704–00291 ..	Hopkins Malathion 25% W.P.
034704–00295 ..	Hopkins Vegetation Killer
034704–00321 ..	Niagara Lime Sulphur Solution Fungicide-Insecticide
034704–00360 ..	Stik
034704–00392 ..	Clean Crop Par F 60 Soluble Oil
034704–00423 ..	Dursban 2 Coated Granules
034704–00429 ..	Liqui-Stik 200
034704–00448 ..	Clean Crop Dursban 1G Insecticide
034704–00490 ..	Atrazine 80WP
034704–00516 ..	Thiosulfan 3 EC
034704–00540 ..	De-Fend W-25 Insecticide
034704–00546 ..	Clean Crop Dibrom 8 EC
034704–00577 ..	Hopkins Streptomycin 17
034704–00607 ..	Clean Crop Dpd Ester Brush Killer
034704–00616 ..	Clean Crop N 1% Fly & Mosquito Spray
034704–00628 ..	Naa 1-Naphthalene Acetic Acid
034704–00629 ..	1-Napthalene Acetic Acid Sodium Salt
034704–00645 ..	Unitox Granules
034704–00653 ..	Captan Seed Treater with Lindane
034704–00658 ..	Lindane 25 Planter Box Seed Treater
034704–00662 ..	Thiram 35 + Moly-Lube Planter Box Seed Treater
034704–00674 ..	Lindane 25 EC F Dyed Seed Treater
034704–00684 ..	Clean Crop Metam-Sodium 42% Technical
034704–00693 ..	Clean Crop Chlorpyrifos 50WP Seed Treater
034704–00696 ..	Clean Crop Tobacco Sucker Control
034704–00698 ..	Copper Hydroxide 4.5l
034704–00707 ..	Carbaryl 99% Technical

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
034704–00712 ..	Rampart 10-G Soil and Systemic Insecticide
034704–00737 ..	Maneb Lindane Seed Protectant
034704–00739 ..	Maneb Plus
034704–00740 ..	Maneb 4 Flowable
034704–00744 ..	Clean Crop Man-Z 300 Dyed Flowable Seed Protectant
034704–00747 ..	Moyer CU ZN
034704–00749 ..	Clean Crop Malathion 2 Home Lawn and Garden Spray
034704–00750 ..	Clean Crop Benefin Weed & Feed
034704–00751 ..	Benefin 122 Plus Fertilizer
034704–00754 ..	Clean Crop Prometon 2.5% Liquid
034704–00756 ..	Transplant Starter
034704–00757 ..	Lawn Weed Killer
034704–00763 ..	Tree Spray Oil
034704–00764 ..	Clean Crop Msma 1-L Turf Herbicide
034704–00784 ..	Atrazine Technical
034704–00788 ..	Dimethoate Technical
034704–00789 ..	Liquid Edger - 4 Way
034704–00793 ..	Grass & Weed Killer - 4 Way
034704–00826 ..	Chlorpyrifos Technical
034810–00002 ..	Super Wex-San
034810–00003 ..	Wex-San-M
034810–00030 ..	Broad-Cide I
035054–00002 ..	Term-Out
035138–00078 ..	Aero General Purpose Insecticide
035488–20203 ..	Doc Edmonds Roach Powder
035512–00036 ..	Turf Pride with 0.67% Dursban
035896–00002 ..	Wood-Last Conc. Wood Preserv. Aq.50% Sol.CCA-Type A
036029–00011 ..	Oat Bait for Pocket Gophers II
036232–00002 ..	R and C Spray III
036272–00021 ..	Mystic Home Pest Control
037657–00001 ..	J & B Pool Supply
039039–00002 ..	Max-Con Insecticide Ear Tags
039272–00010 ..	Wepak Mint Disinfectant
039412–00001 ..	Team 218 Swimming Pool Algaecide
039815–00002 ..	Hagen Bird Guard
040184–00001 ..	Argenton Bacteriostatic Water Treatment Unit
040536–00001 ..	Narco Nar-Cide
041138–00004 ..	Neutralle Swak II Insecticide
041837–20001 ..	Blu-Clor Sodium Hypochlorite Solution
041988–00001 ..	Snail-A-Cide
041988–00002 ..	Algae-A-Way
041997–20003 ..	Dietz Sanitizer for Swimming Pool Chlorination and Sanitizin
042177–00003 ..	Olympic Algaecide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
042177–00007 ..	Olympic Concentrated Algaecide 40X
042177–00012 ..	Jack Frost Winter Algaecide 40
042177–00013 ..	Jack Frost Winter Guard Plus
042177–00014 ..	Olympic LTM
042177–00015 ..	Olympic Power Shock
042177–00019 ..	Olympic Algaecide
042177–00020 ..	Jack Frost Winter Algaecide
042177–00030 ..	Jack Frost Winter Prep
042177–00031 ..	Jack Frost Winter Guard
042177–00034 ..	Olympic Algaecide 10
042177–00038 ..	Olympic Poly Algaecide 50
042177–00045 ..	Olympic Spa Algaecide
042177–00049 ..	Jack Frost Winter Shock
042177–00051 ..	Jack Frost Winter Algaecide 20
042177–00054 ..	Olympic Spa Shock
042177–00055 ..	Olympic Spa Litho-Chlor
042177–00058 ..	Olympic Power Shock Plus
042177–00060 ..	E-Z Clor Big Tabs
042177–00065 ..	Tri-Chlor Slow Sticks
042177–00070 ..	E.z Clor Econocide
042233–00001 ..	Sodium Hypochlorite Solution
042446–00004 ..	A-7 Microbiocide
042750–00017 ..	Visko-Rhap Low Volatile Ester 2D Herbicide for Ground Applic
042750–00018 ..	Visko Rhap Low Volatile 2 DP
043512–20203 ..	Drop Dead Roach Killer
043576–00003 ..	Flea & Tick Powder
043576–00004 ..	Pet Protector
043576–00007 ..	Flea & Tick Killer Shampoo
043602–00004 ..	Fighter Bomber X-Tra Fly and Mosquito Insecticide
043602–00020 ..	Fighter Bomber Triple Fly and Mosquito Insecticide
043602–00021 ..	MPC-TOX
043994–00009 ..	Sanitizer 200-Z
044538–00002 ..	Citation Flea and Tick Shampoo
044811–00005 ..	Microbiocide 23-L
045631–00020 ..	Sanova Base (31%)
046183–00014 ..	D-S Liquid Cleaner, Sanitizer and Disinfectant
046193–00010 ..	Trifluralin 4EC Herbicide
046207–00005 ..	Activ-Ox 20
046260–00037 ..	Jobe's Indoor Plant Insect Spray
046519–00001 ..	D125 AG-10
046620–00003 ..	Requat Antimicrobial Agent
046923–00002 ..	Old Bridge Basic Copper Sulfate
047006–00005 ..	Orlik Dursban Granules
047033–00006 ..	S-303-L
047033–00007 ..	S 103P Sodium-Dichloro-S-Triazinetrione

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
047033–00008 ..	S 102P Trichloro-S-Triazinetrione
047319–00001 ..	Sevana Bird Repellent
047319–00004 ..	Agrigard Insect Repellent
047550–00003 ..	Elite Pyrethrins Flea and Tick Dip
047634–00001 ..	TC 160
047651–00006 ..	House Plant Insect Spray
048142–00003 ..	Nordox 75
048211–20004 ..	Chlor 525
048226–20003 ..	Chemical Pools Liquid-Shock
048668–00010 ..	PPP Perma-Dip Flea & Tick Dip Solution
049396–00001 ..	A-100
049396–00005 ..	A-300
049403–00015 ..	Nipacide Cr
049403–00031 ..	Bioban Gk Antimicrobial Agent
049614–00001 ..	K-San
050397–00001 ..	Liquefied Chlorine Gas Under Pressure
050534–00024 ..	Technical Daconil 2787 Fungicide
050534–00035 ..	Chlorothalonil Flowable 3
050534–00220 ..	Bravo Weather Stik ZN
050534–00221 ..	Daconil Weather Stik ZN
050675–00009 ..	G B M - Rope (grape Berry Moth Pheromone)
050956–00005 ..	Sask-Chlor Calcium Hypochlorite 70%
051032–00014 ..	Micro-Sul Dusting Sulfur O
051267–00001 ..	Bio-Clean
051319–00001 ..	6-(furfurylamino) Purine Technical Grade
051319–00002 ..	Gibberellic Acid (ga3) 92% Technical Grade
051422–00003 ..	Black Algaecide
051877–00001 ..	Carbon Dioxide
052636–00001 ..	All Clear!!! Root Destroyer
052991–00007 ..	Bedoukian Cis-11-Tetradecenyl Acetate Technical Pheromone
053281–00004 ..	SCS 9mm
053892–00009 ..	Spa Granules
054292–00002 ..	Kafko Waterbed Conditioner
054698–00001 ..	FX-3 Root Killer
054705–00004 ..	Monterey "7" Carbaryl Insecticide
055501–00003 ..	The Recipe
055638–00016 ..	AG-10 Biofungicide
055638–00029 ..	Aspire Biofungicide
055638–00047 ..	Mattch Bioinsecticide
055638–00048 ..	MVP II Bioinsecticide
055710–00001 ..	QC-4125
055710–00002 ..	QC - 4127
056138–20001 ..	Safe-Guard Sodium Hypochlorite Solution
056194–00001 ..	Insectaside D.E.
056194–00004 ..	Insect-Aside P.p.d. Multipurpose Insecticide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
056437–00001 ..	Yea! Poly-D-Glucosamine Solution
056485–00004 ..	Activ-Ox 20
056575–00012 ..	Deet Insect Repellent 20
056625–00002 ..	Blizzard System Liquid Nitrogen
056625–00003 ..	Power Plant Insecticide
056887–00001 ..	Cajun Roach Spray
056887–00002 ..	Cajun Wasp & Hornet Killer
057091–00014 ..	Biocare 90
057135–00001 ..	Chlorine Gas
057146–00002 ..	Wc 630
057607–00001 ..	Quad Algaequell
057787–00028 ..	Proteam Polyquat Algaecide 60
058369–00001 ..	Nip It In the Bud Natural Insect Repellent
058369–00003 ..	Fuzzie Buddie Shampoo for Pets with Pure Eucalyptus Oil
058369–00004 ..	R.I P. Ant and Roach Insecticide with Repellent
058616–00002 ..	PCT 3025
058866–00011 ..	Cinnacure P1005
059151–20002 ..	Nuchem Cf-167
059657–00001 ..	Technical Ethylene
059893–00003 ..	Coustic Glo Ceiling Cleaner Sanitizer C1
060061–00082 ..	Timbertreat 4wt Insecticide Wood Treatment Concentrate
060166–00001 ..	Chlorine Liquified Gas Under Pressure
061202–00002 ..	Triclopyr-EZ-Ject
061409–00002 ..	Hi-Chlor
061428–00001 ..	Water Preserver Concentrate
061468–00005 ..	Coal Tar Creosote (general Application)
062190–00019 ..	Arch BA
062190–00020 ..	Arch BX
062207–00005 ..	Fox-Chlor Plus
062207–00006 ..	Fox-Chlor
062331–00001 ..	Earthfire Vaporizing Fluid
062331–00002 ..	Earthfire Vaporizing Aerosol
062896–00001 ..	Zip Strip
063824–00003 ..	LTM-San Liquid Sanitizer
063963–00001 ..	Ethylene
064077–00001 ..	Barncl-X Biocide
064137–00003 ..	Mycostop Biofungicide for Repackaging Only
064321–00004 ..	Bio Kill Flora Brand Insecticide
064321–00005 ..	Bio Kill Brand Insecticide Aerosol
064328–00001 ..	Advance-Lf
064454–00001 ..	CKR Chlorine Liquefied Gas
064881–00005 ..	AEM 5772 Antimicrobial Mup
065092–00001 ..	ZE Lin Chen Chalk
065151–00002 ..	Bactericide 2
065170–00001 ..	Sodium Chlorate
065233–00001 ..	Treo SPF 15

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
065233–00006 ..	Treo SPF 30
065233–00011 ..	Primavera Botanical Bug-Repelling Spray
065233–00012 ..	Primavera Outdoor Protection Gel for Kids SPF 27
065458–00002 ..	Plato Industries' Insecticide Chip
065458–00003 ..	Bactec Bt 16 Biological Insecticide
065782–00001 ..	Liquefied Chlorine Gas Under Pressure
065901–00001 ..	Vitalix Control Tub
066222–00004 ..	Pyrinex Chlorpyrifos 2.3
066222–00005 ..	Bonide Lawn and Ornamental Insecticide W/ dursban* 2e
066222–00006 ..	Pyrinex Chlorpyrifos 2E Insecticide
067064–00003 ..	Outdoor Animal Repellent
067197–00007 ..	Perma-Guard Kleen Bin D-20
067360–00002 ..	Intercide T-O Microbiostat
067425–00013 ..	Ecopac AR
067427–00001 ..	Flea Tech Home Treatment
067496–00001 ..	BK2Z Insecticide
067760–00038 ..	Parathion 8 EC.
067760–00039 ..	Cheminova Ethyl Methyl Parathion 6-3 EC
067813–00002 ..	Dow Liquid Disinfectant Formulation 3A
067869–00029 ..	N-2003 Antimicrobial
067959–00003 ..	Trilin 5
067959–00006 ..	Trilin WF .74G
067959–00007 ..	Trilin 5G
068146–00003 ..	Termafume
068223–00001 ..	Ethylene Compressed Plant Growth Regulator
068477–00001 ..	Nimby
068539–00001 ..	F-Stop Biological Fungicide Concentrate
068539–00002 ..	F-Stop Biological Fungicide Seed Protection
068543–00027 ..	Bengal Mosquito Repellent
068563–00001 ..	Pepper Treat Wild Bird Seed
068563–00002 ..	Seed Saver
068708–00010 ..	Tekstim Ec9555a
069151–00003 ..	Steritech DD-20
069151–00004 ..	Steritech BD-20 MUP
069261–00002 ..	Diasource Diatomaceous Earth Crawling Insect Killer
069266–00001 ..	Insectacease
069470–00025 ..	Thrifty Granular
069632–00001 ..	Nasa/Emu Bacteriostatic
069632–00003 ..	Unibed (URC 90220)
069632–00004 ..	Nasa/space Shuttle Mcv Bacteriostatic Cartridge
069632–00005 ..	Ion Exchange Bed URC 90116

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
069681–00011 ..	Clor Mor Trichlor Cartridge
069718–00001 ..	Rambal Pynamin Forte 60 Mosquito Mat
069840–00001 ..	Blood Blotter
069845–00001 ..	Tide-GA3 Tech.92%
069987–00002 ..	PY-T-20
070051–00005 ..	Margosan-O Botanical Insecticide Concentrate
070051–00012 ..	Neemgard
070051–00022 ..	Azatin-EC
070051–00026 ..	Azatin Technical 20%
070051–00032 ..	Technical Pheromone Z-11
070051–00033 ..	Phillips 66 Technical Pheromone Gossyplure
070051–00036 ..	Technical Pheromone E/ Z-4-TDA
070051–00039 ..	Biosys Frustrate Pbw Bands
070051–00049 ..	Technical CGA-269941
070051–00054 ..	Thuricide R Hp 1.5 B* Dust Base
070051–00056 ..	Thuricide(r) 32LV
070051–00062 ..	Thuricide Wettable Powder
070051–00063 ..	Javelin ECB Granules
070051–00081 ..	Raven Technical Powder Bioinsecticide
070051–00088 ..	Lepinox G Bioinsecticide
070051–00092 ..	Lepinox XL WDG Insecticide
070051–00093 ..	Condor WDG
070072–00001 ..	TFA Super-Kill Fire Ant Exterminator
070160–00001 ..	Insect Control
070160–00004 ..	Insect Control Concentrate
070241–00001 ..	Cut Germicidal
070271–20002 ..	Lass0 10% Sodium Hypochlorite Solution
070464–00001 ..	Elexa
070506–00026 ..	Devrinol 50-WP Selective Herbicide
070506–00029 ..	Devrinol 50WP Ornamental Herbicide
070506–00030 ..	Devrinol 10-G Ornamental Selective Herbicide
070506–00032 ..	Devrinol 5-G Ornamental Selective Herbicide
070529–00001 ..	Chlorine Gas
070529–00002 ..	Aqua Chlor Chlorinating Solution
070529–00003 ..	Aqua Chlor Sodium Hypochlorite 12.5%
070549–20001 ..	Sodium Hypochlorite Solution
070880–00001 ..	PT807-HCL (manufacturing Use Product)
070880–00002 ..	Ecolyst
070907–00003 ..	Pilot 4E-SG
070968–00001 ..	Horsearound Horse Clothing Spray
071413–00001 ..	Chlorine
071683–00002 ..	Exile Ll 3.3
071770–00005 ..	Eko Orange

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
071770–00006 ..	Eko Blue
071906–00001 ..	Peroxate Precursor
072061–00001 ..	PF-1025 Dormant-Summer Oil
072167–00026 ..	Chlorothalonil Technical
072408–00001 ..	Micron Technical Sulfur
072592–00001 ..	Titan 2-2
072592–00002 ..	Titan 4 - 4
072744–00001 ..	Energy Plus
072827–00001 ..	RS21
073017–20007 ..	Gen Chlor 150 M
073020–00001 ..	Copper Sulfate Pentahydrate Manufacturing Use
073020–00002 ..	Copper Sulfate Pentahydrate
073797–00001 ..	Focus Brands Disinfecting Wipes
073825–00005 ..	Ecozap Dust Insecticide
073876–00002 ..	Fite Bite 100
074126–00001 ..	EPTC Technical
074210–00003 ..	Sanibac 386
074299–20002 ..	Chlorinating Solution
074341–00001 ..	Excel SF Non-Drip Ant Bait
074437–00001 ..	Grapple Flea Powder
074468–00001 ..	Proactive Permethrin Termiticide/Insecticide
074500–00001 ..	A-D Tabs
074517–00003 ..	Zydox AD-20 MUP
074530–00006 ..	Glyphosate Technical
074530–00007 ..	Molinate Technical
074598–00001 ..	Magic Tablecloth
074602–00001 ..	Verox-25
074602–00002 ..	Verox-5HM
074602–00003 ..	Verox-8
074815–00002 ..	Aquafit
075023–00001 ..	Synper(r) 30-30-ULV
075023–00002 ..	Synper 31-66-ULV
075031–00001 ..	Nicotine Smoke Generator
075082–00001 ..	Super Di-All Mildewcide
075082–00002 ..	Di All Paint Insecticide
075147–00001 ..	Clopyr-D
075147–00002 ..	Clopyralid Brush
075147–00006 ..	Ag Value Clopyralid Ivm Specialty Herbicide
075480–00001 ..	Megacide(r)
075483–00001 ..	Amsolv Amcide 5702
075483–00002 ..	Amsolv Amcide 5708
075483–00003 ..	CWT-325 Algaecide & Microbicide
075483–00004 ..	Amsolv Amcide 5711
075483–00005 ..	CWT-300
075764–00001 ..	Personal Mosquito Repeller
075844–00001 ..	SBP-2001
079529–00001 ..	Snarol Snail & Slug Killer Pellets
079529–00002 ..	Snarol Snail & Slug Killer Meal
079529–00003 ..	Black Flag House and Garden Insect Killer
079529–00005 ..	Black Flag Flea + Tick Killer Rug & Room Spray
079529–00006 ..	Black Flag Tomato & Vegetable Fogger
079529–00007 ..	Antrol Ant Killer-Formula II

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
079529–00008 ..	Black Flag Rug De-Bug
079529–00010 ..	Black Flag Pet Spray Formula I
079529–00012 ..	Black Flag Wasp-Bee-Hornet Killer
079529–00013 ..	Black Flag Roach Ender Spray
079529–00014 ..	Holiday Ant and Roach Killer Spray
079529–00015 ..	Black Flag Fogger IV
079529–00016 ..	Black Flag Fatal Attraction
079529–00017 ..	Cai Mothproofer Spray
079529–00018 ..	Black Flag Ant & Roach Killer Formula B
079529–00019 ..	Black Flag Ant Killing System I
079529–00020 ..	Black Flag Ant and Roach Killer - Formula C.
079529–00021 ..	Intrepid
079529–00022 ..	Iron
079529–00023 ..	Igloo
079529–00024 ..	Icarus
079529–00025 ..	Black Flag Flea Killer V
079529–00026 ..	Initial
079529–00027 ..	Infinity
079705–00001 ..	Microfree Brand T 558
079705–00002 ..	Microfree Brand Z 200
080098–00001 ..	Power Chem

IV. Public Docket

Complete lists of registrations canceled for non-payment of the maintenance fee will also be available for reference during normal business hours in the OPP Public Docket, Room 119, Crystal Mall 2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

List of Subjects

Environmental protection, Pesticides and pest, Fees.

Dated: October 14, 2004.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 04–23941 Filed 10–26–04; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0231; FRL–7370–4]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2004–0231, must be received on or before November 26, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0231. The official public docket consists of the documents

specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0231. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0231. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0231.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0231. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing an Active Ingredient not Included in any Previously Registered Product

File Symbol: 67979–L. *Applicant*: Syngenta Seeds, Inc., Field Crops-NAFTA, P.O. Box 12257, 3054 Cornwallis Rd., Research Triangle Park, NC 27709–2257. *Product Name*: Event MIR604 Rootworm-Protected Corn. Plant-incorporated protectant. *Active ingredient*: Modified Cry3A protein and the genetic material necessary for its production (via elements of pZM26) in Event MIR604 corn SYN-IR604-8.*Proposed classification/Use*: None.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 13, 2004.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–23691 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0273; FRL–7676–1]

BAS 320 I; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0273, must be received on or before November 26, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ann Hanger, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0395; e-mail address: *hanger.ann@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0273. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0273. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0273. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0273.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0273. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does

not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 19, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

Pesticide Petition 4F6839

EPA has received a pesticide petition (PP 4F6839) from BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of BAS 320 I, a mixture comprising 4-{(2E)-2-({[4-(trifluoromethoxy)anilino] carbonyl} hydrazono)-2-[3-(trifluoromethyl)phenyl]ethyl} benzonitrile and 4-{(2Z)-2-({[4-(trifluoromethoxy)anilino] carbonyl} hydrazono)-2-[3-(trifluoromethyl) phenyl]ethyl} benzonitrile in or on the raw agricultural commodity tuberous and corm vegetables (crop subgroup 1–C) at 0.05 parts per million (ppm), leafy vegetables (crop group 4) at 35 ppm, head and stem brassica (crop subgroup 5–A) at 5 ppm, leafy brassica greens (crop subgroup 5–B) at 25 ppm, fruiting vegetables (crop group 8) at 1.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* In three plant metabolism studies (cabbage, tomato and cotton), the major component of the residue was BAS 320 I (E- and Z-isomers). The major degradate was the ketone, M320I04 and an oxidized and cyclized metabolite, M320I23, was present in lesser amounts. These four compounds were defined as the residues of concern and were incorporated into an analytical method. In the confined rotational crop studies plant uptake was very limited and the residues were a mixture of minor and polar components.

2. *Analytical method.* BASF Analytical Method No. 531/0 was developed to determine residues of BAS 320 I (E- and Z-Isomer) and its metabolites M320I04 and M320I23, the residues of concern in plants, in crop matrices. In this method, residues of BAS 320 I are extracted from plant matrices with methanol/water (70:30; v/v) and then partitioned into dichloromethane. For oily matrices, the residues are extracted with a mixture of isohexane/acetonitrile (1:1; v/v). The final determination of BAS 320I and its metabolites is performed by LC/MS/MS.

3. *Magnitude of residues.* Field trials were carried out in order to determine the magnitude of residue in the following crops: Broccoli, cabbage, celery, head lettuce, leaf lettuce, mustard greens, pepper (bell and non-bell), potato, spinach, and tomato. Field trials were conducted in the required regions. Field trials were carried out using the maximum label rate, the maximum number of applications and the minimum preharvest interval. In addition, processing studies were conducted on potatoes and tomatoes to determine the concentration factor during normal processing of the raw agricultural commodities. No animal feeding studies were conducted.

B. Toxicological Profile

1. *Acute toxicity*. Based on the available acute toxicity data BAS 320 I and its formulated product do not pose acute toxicity risks.

FOR TECHNICAL BAS 320 I:

Oral LD50	Rat	Lethal dose $_{50}$ (LD_{50} > 5,000 milligrams/kilogram body weight (mg/kg b.w.)	Category IV

FOR TECHNICAL BAS 320 I:—Continued

Oral LD_{50}	Mouse	LD_{50} > 5,000 mg/kg b.w.	Category IV
Dermal LD_{50}	Rat	LD_{50} > 5,000 mg/kg b.w.	Category IV
Inhalation LC_{50}	Rat	>5.2 mg/liters (L)	Category IV
Eye irritation	Rabbit	Not irritating	Category IV
Skin irritation	Rabbit	Not irritating	Category IV
Skin sensitization (Maximization test)	Guinea pig	Not sensitizing	

FOR THE BAS 320 00 I SC FORMULATION:

Oral LD_{50}	Rat	LD_{50}> 2,000 mg/kg b.w.	Category III
Dermal LD_{50}	Rat	LD_{50}> 4,000 mg/kg b.w.	Category III
Inhalation LC_{50}	Rat	>5.2 mg/L	Category IV
Eye irritation	Rabbit	Slightly irritating	Category III
Skin irritation	Rabbit	Not irritating	Category IV
Skin sensitization (Modified Buehler Method)	Guinea pig	Not sensitizing	

2. *Genotoxicty.* In a battery of three *in vitro* and two *in vivo* mutagenicity assays consisting of all required end-points (point mutation, chromosomal damage, and DNA damage and repair), the weight of the evidence for BAS 320 I indicates a lack of potential genotoxicity.

Specifically, for the battery of three *in vitro* mutagenicity assays with BAS 320 I, no positive responses were observed for increased revertant frequencies with and without metabolic activation bacterial reverse mutation assay or for increased mutant frequencies with and without metabolic activation Hypoxanthine guanine phophoribosyl transferase (HGPRT) locus assay. Although there was a positive result for a statistically increased number of structurally aberrant metaphases in the chromosomes, which indicates clastogenic potential under *in vitro* conditions, this result was only observed without metabolic activation cytogenicity study with V79 cells.

Importantly, the potential biological significance of this apparent chromosome damage observed *in vitro* only without metabolic activation, was evaluated *in vivo* using the mouse micronucleus assay. Testing in the *in vivo* micronucleus study with NMRI mice was conducted at a high dose level (2,000 mg/kg b.w.) that demonstrated clinical symptoms of toxicity, including piloerection and poor general state, in 5 of 5 animals. No significant or dose-related increases in chromosomal damage were observed in this *in vivo* test, indicating that BAS 320 I does not cause chromosomal aberrations in intact animals.

Moreover, it has also been recognized by EPA that more weight should be placed on *in vivo* systems than *in vitro* systems as expressed in the Agency's weight of evidence for genotoxic evaluation of a chemical included in the ''*Guidelines for Mutagenicity Risk Assessment*'' (**Federal Register**, September 24, 1986, Vol. 51: 34006–34012). Thus, the negative *in vivo* results (non-clastogenicity for chromosomal aberrations) observed in the mouse micronucleus assay and the rat hepatocytes assay, should override the positive results obtained in the *in vitro* assay only without metabolic activation. Furthermore, it has been noted that *in vitro* systems may simulate abnormal physiological conditions from prolonged exposure to a chemical in the absence of S–9 metabolic activation (Brusick, D.J. (editor) 1987. *Genotoxicity Produced in Cultured Mammalian Cell Assay by Treatment Conditions.* Mutation Research, Vol. 189, No.1: 1–69 and Sofuni, T. 1993. *Japanese Guidelines for Mutagenicity Testing.* Environmental and Molecular Mutagenesis, Vol. 21, No.1: 2–7). Consequently, based on the weight of the evidence presented above, BAS 320 I does not pose a genotoxic concern.

3. *Reproductive and developmental toxicity.* Potential reproductive toxicity of BAS 320 I was investigated in a 2–generation reproduction toxicity study in Wistar rats by oral gavage administration. Originally, the highest dose tested (HDT) by oral gavage was 75 mg/kg b.w./day, which induced both excessive maternal toxicity (very high incidences of poor general health in females during premating, gestation, and lactation; and statistically decreased food consumption, body weights, and body weight gain) as well as excessive developmental toxicity (statistically impaired pup body weights and body weight gain), which altogether resulted in high pup mortality. Consequently, a meaningful assessment of the potential reproductive toxicity of the test compound at this excessively toxic dose level was not possible. Thereafter, for the next two successive parental generations of rats, which were originally derived from the parents treated at 75 mg/kg b.w./day, the HDT was 50 mg/kg b.w./day.

Subsequently, the no observable adverse effect level (NOAEL) for parental toxicity was 20 mg/kg b.w./day, based on the following effects for females at 50 mg/kg b.w./day (HDT for two consecutive generations) –

increased incidences of poor general health in females during premating, gestation, and lactation; 3 of 25 dams with complete litter losses; and statistically significantly reduced body weights during premating, gestation, and lactation.

The NOAEL for offspring/pup toxicity was 20 mg/kg b.w./day, based on a slight increased incidence of pup mortality at 50 mg/kg b.w./day. Whereas the NOAEL for fertility in this study was 50 mg/kg b.w./day (HDT for two generations), the NOAEL for reproductive performance was considered to be 20 mg/kg b.w./day, based on 3 of 25 dams with complete litter losses, of which 2 of these 3 dams had indications of poor nursing for their first generation of pups. It is noteworthy that because most of the pup mortality was due to poor nursing in only 2 of 25 dams, this finding may be considered to be incidental. Importantly, no comparable impairment of reproductive performance occurred for the succeeding parental generation treated by oral gavage administration at 50 mg/kg b.w./day.

In a developmental (teratology) toxicity study in the Wistar rat, the results indicated that the NOAEL for maternal toxicity was 40 mg/kg b.w./day, based on statistically decreased food consumption and body weight gains at 120 mg/kg b.w./day (HDT). The NOAEL for fetal (prenatal)/developmental toxicity was 120 mg/kg b.w./day (HDT). In addition, there were no indications of any teratogenic effects in the rat fetuses at 120 mg/kg b.w./day (HDT). Therefore, BAS 320 I is considered to be neither a developmental toxicant nor a teratogenic agent in the rat.

In a developmental (teratology) toxicity study in the Himalayan rabbit, the results indicated that the NOAEL for maternal toxicity was 100 mg/kg b.w./day, based on several clinical symptoms of toxicity (including ataxia and poor general state) occurring in 4 of 25 does at 300 mg/kg b.w./day, for which 2 of these 4 does had abortions prior to being sacrificed early, with a third doe at 300 mg/kg b.w./day being sacrificed moribund. Similarly, the NOAEL for fetal (prenatal)/developmental toxicity was 100 mg/kg b.w./day, based on slightly decreased mean fetal body weights as well as an increased rate for a certain skeletal variation, namely incomplete ossification of sternabrae. Because developmental toxicity was only observed at dose levels that were maternally toxic, BAS 320 I is not selectively toxic to the fetal rabbit.

Lastly, in this rabbit developmental toxicity study, there were no indications of any teratogenic effects in the rabbit fetuses at 300 mg/kg b.w./day (HDT). Therefore, BAS 320 I is not teratogenic in the rabbit.

4. *Subchronic toxicity.* In the Sprague-Dawley rat, treatment by oral gavage with BAS 320 I for a subchronic duration (90–day timepoint in the chronic toxicity/carcinogenicity study) resulted in reduced food consumption and/or decreased mean body weight and/or body weight gains in males and females at 300 mg/kg b.w./day and in increased incidences of hepatocellular centrilobular hypertrophy in the livers of males at 300 mg/kg b.w./day. Under the conditions of the study, the NOAEL for oral administration of BAS 320 I for 90 days was 60 mg/kg b.w./day.

In the beagle dog, treatment by oral gavage with BAS 320 I for a subchronic duration (90–day timepoint in the chronic toxicity study) resulted in reduced body weight gain and/or decreased food consumption in several dogs at 30 mg/kg b.w./day and slightly decreased mean cell hemoglobin concentration (MCHC) at 30 mg/kg b.w./day. Under the conditions of the study, the NOAEL for oral administration of BAS 320 I for 90 days was 12 mg/kg b.w./day.

Lastly, in a subchronic (90–day) dermal toxicity study conducted with BAS 320 I technical in Wistar rats, the results support a NOAEL of 100 mg/kg b.w./day, based on decreased food consumption (females) and decreased body weight change in males and females at 300 mg/kg b.w./day, the next HDT.

5. *Chronic toxicity.* In the Sprague-Dawley rat, treatment by oral gavage with BAS 320 I for a 2–year chronic duration resulted in dose-related increased incidences of hepatocellular centrilobular hypertrophy in the livers of males and females at 60 mg/kg b.w./day and at 300/200 mg/kg b.w./day and hepatocellular basophilic alteration in males at 60 and 300 mg/kg b.w./day. (Note: Beginning the first day of Week 3, the dose level of the high-dose females was lowered from 300 to 200 mg/kg b.w./day, due to an adverse effect of –71% decreased body weight gain as compared to controls.)

Therefore, the NOAEL for systemic toxicity following oral administration of BAS 320 I for 24 months to Sprague-Dawley rats was 30 mg/kg b.w./day for males and females. Importantly, treatment with BAS 320 I to rats for 2 years resulted in no test substance-related neoplastic findings, and therefore, the NOAEL for oncogenicity was 300/200 mg/kg b.w./day (HDT).

In the CD–1 mouse, treatment by oral gavage with BAS 320 I for an 18–month chronic duration resulted in a treatment-related increased incidence of increased brown pigment in the spleens of male and female animals administered 1,000 mg/kg b.w./day (HDT), as compared to controls. Under the conditions of the study, the NOAEL for systemic toxicity following oral administration of BAS 320 I for 18 months to CD–1 mice was 250 mg/kg b.w./day (the next HDT) for males and females. Importantly, treatment with BAS 320 I to mice for 18 months resulted in no test substance-related neoplastic findings, and therefore, the NOAEL for oncogenicity was 1,000 mg/kg b.w./day (HDT).

In the beagle dog, treatment via gelatin capsules with BAS 320 I for a 12–month chronic duration resulted in reduced body weight gain and/or decreased food consumption in several dogs at 30 mg/kg b.w./day and slightly decreased mean MCHC at 30 mg/kg b.w./day. Under the conditions of the study, the NOAEL for oral administration of BAS 320 I for 12 months was 12 mg/kg b.w./day.

i. *Threshold effect.* For estimated chronic exposure, the calculation of the chronic reference dose (chronic RfD) is based on the results of the chronic toxicity studies in the rat, mouse, and dog, and the two–generation reproduction study in the rat. For BAS 320 I, the lowest NOAEL for chronic toxic effects is 12 mg/kg b.w./day from the 12–month dog study. A safety factor of 100 is applied to the NOAEL of 12 mg/kg b.w./day, which results in a chronic RfD of 0.12 mg/kg b.w./day.

ii. *Non threshold effect.* Since there were no test substance-related neoplastic findings following long-term treatment with BAS 320 I to mice for 18 months or to rats for 24 months, the NOAEL for oncogenicity in both studies was established at the respective HDT. Therefore, BAS 320 I should be classified as ''not likely to be a human carcinogen.''

6. *Animal metabolism.* In the rat and goat metabolism studies, the majority of the dose was rapidly excreted in the feces. The low levels that were absorbed were distributed throughout various tissues. BAS 320 I was the major component of the extractable residues in all tissues and milk and is the only residue of concern. Metabolism of BAS 320 I occurs by hydroxylation and conjugation on either of the phenyl rings or at the ethylene bridge and are the major routes of detoxification. Cleavage of the semicarbazide bond to yield M320I04 also occurs, usually with accompanying conjugation. The only residue of concern is BAS 320 I.

7. *Metabolite toxicology.* Toxicity of the metabolites of BAS 320 I with potential exposure to humans was concurrently evaluated during toxicity testing of the parent except for the metabolite M320I23 that was not observed in the rat metabolism study. The Z-isomer (M320I02) of BAS 320 I was evaluated in additional toxicity tests to confirm no differences between the minor Z-isomer component and BAS 320 I technical with a 9 to 1 E-isomer to Z-isomer ratio, respectively. The results show no toxicological concerns:

i. *Toxicity studies with the metabolite M320I23*.

• Acute toxicity study with metabolite M 320I023

• The metabolite M 320I023 of BAS 320 I technical demonstrates low acute toxicity via the oral route of exposure in the rat.

• Oral LD_{50} > 2,000 mg/kg b.w. (category III).

ii. *Subchronic toxicity study with metabolite M 320I023*.

In the Sprague-Dawley rat, treatment by oral gavage with metabolite M 320I023 of BAS 320 I technical for a subchronic (90–day) duration resulted in systemic toxicity effects of increased relative liver weights (females) and increased incidences of liver hepatocellular centrilobular hypertrophy in males and females at 1,000 mg/kg b.w./day (HDT), as compared to controls. Under the conditions of the study, the NOAEL for oral administration of the metabolite M 320I023 of BAS 320 I for 90 days was 200 mg/kg b.w./day (next HDT) in males and females.

iii. *Mutagenicity/Genotoxicity studies with metabolite M 320I023*.

In a battery of three *in vitro* and one *in vivo* mutagenicity assays consisting of all required end-points (point mutation, chromosomal damage, and DNA damage and repair), the weight of the evidence for the metabolite M 320I023 (parent ketone) of BAS 320 I technical indicates a lack of potential genotoxicity.

Specifically, for the battery of three *in vitro* mutagenicity assays with metabolite M 320I023 of BAS 320 I technical, no positive responses were observed for increased revertant frequencies with and without metabolic activation bacterial reverse mutation assay or for increased mutant frequencies with and without metabolic activation HGPRT locus assay. Although there was a positive result for a statistically increased number of structurally aberrant metaphases in the chromosomes, which indicates clastogenic potential under *in vitro* conditions, this result was only observed with metabolic activation cytogenicity study with V79 cells.

Importantly, the potential biological significance of this apparent chromosome damage observed *in vitro* only with metabolic activation, was evaluated *in vivo* using the mouse micronucleus assay. Testing in this *in vivo* micronucleus study with NMRI mice was conducted at a high dose level (2,000 mg/kg b.w.), that demonstrated no clinical symptoms of toxicity but which represents the limit dose for this assay. No significant or dose-related increases in *in vivo* chromosomal damage were observed, indicating that the metabolite M 320I023 of BAS 320 I technical does not cause chromosomal aberrations in intact animals.

Moreover, it has also been recognized by U.S. EPA that more weight should be placed on *in vivo* systems than *in vitro* systems as expressed in the Agency's weight of evidence for genotoxic evaluation of a chemical included in the ''Guidelines for Mutagenicity Risk Assessment'' (**Federal Register**, September 24, 1986, Vol. 51: 34006–34012). Thus, the negative *in vivo* results (non-clastogenicity for chromosomal aberrations) observed in the mouse micronucleus assay should override the positive results obtained in the *in vitro* assay only with metabolic activation. Furthermore, it has been noted that *in vitro* systems may simulate abnormal physiological conditions (Brusick, D.J. (editor) 1987. *Genotoxicity Produced in Cultured Mammalian Cell Assay by Treatment Conditions*. Mutation Research, Vol. 189, No.1: 1–69). Additionally, it has been reported in the literature that S–9 metabolic activation does not often have adequate cofactors for activating detoxifying mechanisms found in the whole animal system Ashby, J. 1983. *The Unique Role of Rodents in The Detection of Possible Human Carcinogens and Mutagens*. Mutation Research, Vol. 115: 117–213 Galloway, S.M. 1994. *Chromosome Aberrations Induced In Vitro: Mechanisms. Delayed Expression, and Intriguing Questions*. Environmental and Molecular Mutagenesis, Vol. 23, Supplement 24: 44–53. Consequently, based on the weight of the evidence presented above, the metabolite M 320I023 of BAS 320 I technical does not pose a genotoxic concern.

Therefore, as indicated from the results of the mammalian toxicity studies as well as the mutagenicity assays, metabolite M 320I023 of BAS 320 I does not demonstrate more adverse toxicity when compared to the BAS 320 I.

iv. *Toxicity studies with the Z-Isomer of technical BAS 320 I*.

• Acute toxicity study with Z-Isomer. The Z-isomer of BAS 320 I technical demonstrates low acute toxicity via the oral route of exposure in the rat.

• Oral LD_{50} > 5,000 mg/kg b.w. (category IV).

v. *Subchronic toxicity study with Z-Isomer*. In the Sprague-Dawley rat, treatment by oral gavage with the Z-isomer of BAS 320 I for a subchronic (90–day) duration resulted in impaired body weight gain only in females at the mid-dose (300 mg/kg b.w./day) and the high-dose (1,000 mg/kg b.w./day), as compared to controls. Several microscopic changes were observed in female animals at these two dose levels, but all morphologic changes were regarded to be indirect effects of the impaired body weight gain. Under the conditions of the study, the NOAEL for oral administration of the Z-isomer of BAS 320 I for 90 days was 1,000 mg/kg b.w./day (HDT) in males and 100 mg/kg b.w./day (lowest dose tested) in females.

vi. *Mutagenicity/Genotoxicity study with Z-Isomer.* In an *in vitro* mutagenicity assay with the Z-isomer of BAS 320 I, there were no positive responses observed for increased revertant frequencies with and without metabolic activation bacterial reverse mutation assay.

Therefore, as indicated from the results of the mammalian toxicity studies as well as the mutagenicity assay, the minor isomer of BAS 320 I, namely the Z isomer, does not demonstrate more adverse toxicity when compared to BAS 320 I. 8. Endocrine disruption. Data from the reproduction / developmental toxicity and short- and long-term repeated dose toxicity studies with BAS 320 I in the rat, rabbit, mouse, or dog, do not suggest any endocrine disruption activity. This information is based on the absence of any treatment-related effects from the histopathological examination of reproductive organs as well as a low level of concern for possible effects on fertility, reproductive performance, or any other aspect of reproductive function, or on growth and development of the offspring.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Assessments were conducted to evaluate the potential risk due to acute and chronic dietary exposure of the U.S. population to residues of BAS 320 I. This insecticide and its metabolites (M320I04, M320I23) were expressed as the parent compound (BAS 320 I). The dietary analysis was conducted on all proposed crops which include potatoes, sweet potatoes, yams, leafy greens subgroup, leaf petioles subgroup, head &

stem brassica subroup, leafy brassica greens subgroup, and fruiting vegetables except cucurbits.

Secondary residues from meat, milk, and eggs were not included in this assessment since the proposed crops are only considered for human consumption with the exception of processed potato commodities being potentially utilized in animal feed. Animal feeding studies were not required on potatoes based on results of residues of BAS 320 I and its metabolites (M320I04 and M320I23) in unwashed potatoes. Following an application rate 18 times the proposed seasonal rate, residues in potatoes were at or below the limit of quantitation (LOQ) and thus the proposed tolerance level was set at the LOQ and no feeding studies were needed.

The acute and chronic dietary exposure estimates were based on the proposed tolerance values, 100 percent crop treated values, concentration/processing factors and consumption data from the USDA Continuing Survey of Food Intake by Individuals (CSFII 1994 – 1996, 1998) and the EPA Food Commodity Ingredient Database (FCID) using Exponent's Dietary Exposure Evaluation Module (DEEM-FCID) software. Result exposure estimates were compared against the BAS 320 I acute Population Adjusted Dose (aPAD) and chronic Population Adjusted Dose (cPAD) of 20 mg/kg b.w./day and 0.12 mg/kg b.w./day, respectively. Exposure estimates for the BAS 320 I acute dietary assessment were well under 100% of the aPAD at the 99.9th percentile (see table below). The overall U.S. population and the highest exposed subpopulation (all infants) used only 1.16% and 3.26% of the aPAD, respectively. Additional refinements including the use of anticipated residues and predicted percent crop treated would further reduce the acute exposure estimates.

ACUTE DIETARY EXPOSURE ESTIMATES FOR BAS 320 I

Population Subgroups	Exposure Estimate (mg/kg b.w./day)	%aPAD[1]
U.S. population	0.231788	1.16
All infants	0.651674	3.26
1–2 years	0.607989	3.04
3–5 years	0.424105	2.12
1–6 years	0.444105	2.22
6–12 years	0.269403	1.35
13–19 years	0.153397	0.77
Females 13–49 years	0.212264	1.06
Adults 20–49 years	0.210816	1.05
Males 20+ years	0.190737	0.95
Adults 50+ years	0.183849	0.92

[1] 99.9th percentile

Results of the chronic dietary assessments are listed in the table below. The estimated chronic dietary exposure was less than 14.5% of the cPAD for all subpopulations. Additional refinements such as the use of anticipated residues and predicted percent crop treated would further reduce the estimated chronic dietary exposure.

CHRONIC DIETARY EXPOSURE ESTIMATES FOR BAS 320 I

Population subgroups	Exposure Estimate (mg/kg b.w./day)	%cPAD
U.S. population	0.014905	12.4
All infants	0.007363	6.1
1–2 years	0.016032	13.4
3–5 years	0.016745	14.0
1–6 years	0.016241	13.5
6–12 years	0.014179	11.8
13–19 years	0.012417	10.3
Females 13–49 years	0.015466	12.9
Adults 20–49 years	0.015226	12.7
Males 20+ years	0.014347	12.0
Adults 50+ years	0.015557	13.0

ii. *Drinking water*. Drinking water level of comparison (DWLOC) calculation and comparison to surface water and ground water estimations are given in the tables below. The expected environmental concentrations (EEC) for both ground water and surface water are well below the allowable level.

ESTIMATED ACUTE DRINKING WATER VALUES FOR BAS 320 I

DWLOC acute	Adult Males (20–49 years)	Adult Females (13–49 years)	Children (1–6 years)	Children (birth to 1 year)
DWLOC acute (µg/L)	696138.8	596355.81	197403.28	196273.27
DEC's				
PRZM/EXAMS (BASF) Surface water (µg/L)	0.85	0.85	0.85	0.85
Sci-Grow (BASF) Ground water (µg/L)	0.006	0.006	0.006	0.006

ESTIMATED CHRONIC DRINKING WATER VALUES FOR BAS 320 I

DWLOC chronic	Adult Males (20–49 years)	Adult Females (13–49 years)	Children (1–6 years)	Children (birth to 1 year)
DWLOC chronic (µg/L)	3904.9150	3329.5500	1101.1200	1156.8500

ESTIMATED CHRONIC DRINKING WATER VALUES FOR BAS 320 I—Continued

DWLOC chronic	Adult Males (20–49 years)	Adult Females (13–49 years)	Children (1–6 years)	Children (birth to 1 year)
DEC's				
PRZM/EXAMS (BASF) Surface water (μg/L)	0.04	0.04	0.04	0.04
Sci-Grow (BASF) Ground water (μg/L)	0.006	0.006	0.006	0.006

iii. *Aggregate exposure (Diet + Water).* The acute and chronic aggregate exposure of BAS 320 I residues is summarized in the table below.

ESTIMATED AGGREGATE EXPOSURE OF BAS 320 I RESIDUES FROM FOOD AND WATER

Exposure	Infants (0–1 year)	Children (1–6 years)	Males (20–49 years)	Females (13–49 years)
FOOD[1]				
Acute exposure (mg/kg b.w./day)	0.651674	0.444105	0.190737	0.212264
Chronic Exposure (mg/kg b.w./day) %aPAD %cPAD	0.007363 3.26 6.14	0.016241 2.22 13.5	0.014347 0.95 12.0	0.015466 1.06 12.9
WATER				
Acute exposure (mg/kg b.w./day)	0.000085	0.000057	0.000024	0.000027
Chronic exposure (mg/kg b.w./day) %aPAD %cPAD	0.00000400 0.0004 0.0033	0.000003 0.0003 0.0022	0.000001 0.0001 0.0010	0.000001 0.0001 0.0011
AGGREGATE				
Acute exposure (mg/kg b.w./day)	0.651759	0.444162	0.190761	0.212291
Chronic exposure (mg/kg b.w./day) %aPAD %cPAD	0.007367 3.26 6.14	0.016244 2.22 13.5	0.014348 0.95 12.0	0.015467 1.06 12.9

[1] 99.9th percentile

These results indicate the aggregate exposure of BAS 320 I from potential residues in food and water, will not exceed the U.S. EPA's level of concern (100% of PAD). The percent acute and chronic PAD were < 4 and 14% for all subpopulations, respectively. Overall, considering a ''worst-case'' scenario, we can conclude with reasonable certainty that no harm will occur from either acute or chronic aggregate exposure of BAS 320 I residues from the proposed uses.

D. Cumulative Effects

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

The EPA is currently developing methodology to perform cumulative risk assessments. At this time, there is no available data to determine whether BAS 320 I has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and the reliability of the toxicity data, BASF has estimated the aggregate exposure to BAS 320 I will utilize less than 2% and 14% of the aPAD and cPAD for the U.S. population, respectively. For the highest exposed age-related subpopulation the maximum aggregate exposure is predicted to be less than 3.5% of the aPAD (infants) and 15% of the cPAD (3–5 years).

2. *Infants and children.* All subpopulations based on age were considered. Infants and children remained below 3.5 and 15% of the aggregate aPAD and cPAD for food and water, respectively. BASF, considering a worst-case situation, concludes with reasonable certainty that no harm will result to infants or children from aggregate exposure to BAS 320 I residues.

No additional FQPA safety factor(s) are considered to be appropriate for BAS 320 I, for the following reasons: There is a complete toxicity database for BAS 320 I and the exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. There is no evidence of susceptibility following in utero exposure to rats and there is a low level of concern for any uncertainties in the developmental toxicity study in rabbits or the 2–generation reproduction study,

after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment. Based on these data and conclusions, a FQPA safety factor of 1X appears to be appropriate for BAS 320 I.

F. International Tolerances

No Maximum residue levels (MRLs) have been established for BAS 320 I by the Codex Alimentarius Commision (CODEX) or in Canada and Mexico.

[FR Doc. 04–24039 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0224; FRL–7370–1]

Modified Cry3A Protein mCry3A and the Genetic Material Necessary for its Production in Corn; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, entified by docket identification (ID) number OPP–2004–0224, must be received on or before November 26, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0224. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are

submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number –OPP–2004–0224. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0224. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0224.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0224. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 13, 2004.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for

the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Seeds, Inc.

PP 4F6838

EPA has received a pesticide petition (PP 4F6838) from Syngenta Seeds, Inc., P.O. Box 12257, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 174 to establish an exemption from the requirement of a tolerance for the plant-incorporated protectant (modified Cry3A protein and the genetic material necessary for its production) in corn.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Syngenta Seeds, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Syngenta Seeds, Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

A modified Cry3A insect control protein and the genetic material necessary for its production in all corn is proposed for use as a plant-incorporated protectant active ingredient. Production of the modified Cry3A protein within corn plants confers resistance to damage caused by the western corn rootworm and northern corn rootworm, which are major corn pests in the United States. A permanent exemption from tolerances is being requested in conjunction with an application for commercial FIFRA section 3 registration of the active ingredient for use in corn.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues* A modified Cry3A insect control protein is produced in transgenic corn plants derived from transformation Event MIR604. A cry3A gene from *Bacillus thuringiensis subsp. tenebrionis* was recreated synthetically to optimize for expression in corn. Additional changes in this corn-optimized gene were made, such that the encoded modified Cry3A protein (mCry3A) has enhanced activity against larvae of the western corn rootworm (*Diabrotica virgifera virgifera*) and northern corn rootworm (*D. longicornis barberi*). Event MIR604-derived corn plants express the synthetic modified cry3A gene, introduced via transformation vector pZM26, and display resistance to these pests. The native Cry3A protein of *B. thuringiensis subsp. tenebrionis* is a ca. 73 kDa polypeptide of 644 amino acids. By comparison, the mCry3A protein expressed in Event MIR604 corn is a ca. 67 kDa polypeptide of 598 amino acids. Its amino acid sequence corresponds to that of the native Cry3A protein, except that (1) its N-terminus corresponds to methionine-48 of the native protein and (2) a cathepsin G protease recognition site has been introduced into the protein, conferring markedly enhanced commercially exploitable activity toward western and northern corn rootworms. Residues of the mCry3A protein, and/or breakdown products thereof, are present in corn grain and other tissues of Event MIR604-derived plants.

2. *Magnitude of residue at the time of harvest and method used to determine theresidue.* A determination of the magnitude of residue at harvest is not required for residues exempt from tolerances. However, the petitioner has provided data on the quantity of mCry3A protein measured in various plant parts. Average mCry3A levels in grain from Event MIR604-derived hybrid field corn plants were less than one part per million (ppm) on a dry-weight or fresh-weight basis, as measured by ELISA. Average mCry3A levels measured in chopped whole Event MIR604-derived hybrid corn plants were less than or equal to ca. 20 ppm on a dry-weight basis and less than or equal to ca. 8 ppm on a fresh-weight basis.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method is not required because this petition requests an exemption from tolerances. However, the petitioner has submitted an analytical method for detection of the mCry3A protein by ELISA.

C. Mammalian Toxicological Profile

Syngenta Seeds has provided the results of a mammalian toxicology study, *in vitro* digestibility study, heat stability study and bioinformatics evaluations conducted on the mCry3A protein. These studies, summarized herein, demonstrate the lack of toxicity of the mCry3A protein following acute oral high-dose exposure to mice, rapid degradation of mCry3A upon exposure to simulated mammalian gastric fluid, instability of the mCry3A protein upon heating, and the lack of significant amino acid sequence homology of the mCry3A protein to proteins known to be mammalian toxins or human allergens.

When proteins are toxic, they are known to act via acute mechanisms and at very low doses Sjoblad, R.D., J.T. McClintock and R. Engler (1992) Toxicological considerations for protein components of biological pesticide products. Regulatory Toxicol. Pharmacol. 15: 3–9]. Therefore, when a protein demonstrates no acute oral toxicity in high-dose testing using a standard laboratory mammalian test species, this supports the determination that the protein will be non-toxic to humans and other mammals, and will not present a hazard under any realistic exposure scenario, including long-term exposures. Because it is not feasible to extract sufficient mCry3A protein from transformed plants for high-dose toxicology studies, mCry3A protein was produced in recombinant *E. coli* by over expressing the same modified cry3A gene that was introduced into Event MIR604 corn plants. Following purification from *E. coli*, dialysis and lyophilization, the resulting sample, designated test substance MCRY3A–0102, was estimated by ELISA to contain ca. 90.3% mCry3A protein by weight. Side-by-side comparisons of mCry3A in test substance MCRY3A–0102 with mCry3A extracted from Event MIR604-derived corn plants indicated that mCry3A from both sources is biologically active against the same target pest species, has the same apparent molecular weight by SDS-PAGE, immunoreacts with the same anti-Cry3A antibody, and is not apparently glycosylated post-translation. Additionally, peptide mapping of ca. 60% of the mCry3A polypeptide by mass-spectral analysis confirmed the identity and intended amino sequence of mCry3A in test substance MCRY3A–0102. Nucleotide sequencing of the entire DNA insert in Event MIR604–derived plants also confirmed that the mCry3A protein produced in the plants has the exact intended amino acid sequence. These data justify the use of test substance MCRY3A–0102 in safety studies as a surrogate for mCry3A as produced in Event MIR604-derived plants.

An acute toxicity study was conducted in mice according to EPA Test Guideline OPPTS 870.1100. Test substance MCRY3A–0102 was administered orally by gavage to 5 male and 5 female mice at a dose of 2632 mg/

kg body weight, representing ca. 2,377 mg of pure mCry3A protein/kg body weight. A negative control group (5 males and 5 females) concurrently received the dosing vehicle alone, an aqueous suspension of 1% methylcellulose, at the same dosing volume used for the test substance mixture. No test substance-related mortalities or clinical signs of toxicity occurred during the 14–day study. One female mouse in the test group was euthanized the day following dosing due to adverse clinical signs resulting from a dosing injury (confirmed by post-mortem examination). At study termination, macroscopic and microscopic examination of all major organs of the surviving mice revealed no treatment-related abnormalities. Body weight, body weight gain and organ weights (brain, liver, kidneys and spleen) were comparable in the control and test groups. There was no evidence of toxicity. Accordingly, the LD_{50} value for MCRY3A–0102 in male and female mice is greater than 2,632 mg/kg body weight, and the LD_{50} value for pure mCry3A protein is greater than 2,377 mg/kg body weight, the single dose tested.

Extensive bioinformatics searches of public protein databases revealed that the mCry3A protein shows no significant amino acid homology to proteins known to be mammalian toxins or known or suspected to be human allergens. Additional information and testing indicate that the mCry3A protein does not have properties that would suggest it has the potential to become a food allergen. The source of native Cry3A protein (*Bacillus thuringiensis*) is not known to produce food allergens. Unlike allergenic proteins, which typically are present at 1–80% of the total protein in an offending food, the average mCry3A concentration measured in raw grain derived from Event MIR604 corn represents less than 0.0001% of the total protein. (This calculation is based on corn grain containing 10% total protein by weight, and assumes less than 1 ppm mCry3A in the grain.) Additionally, due to degradation via food processing methods, mCry3A will not likely be present in processed food products, or will be present in only trace quantities. The mCry3A protein produced in transformed corn plants is not targeted to a cellular pathway for glycosylation, and shows no evidence of post-translational glycosylation. Bioactivity of mCry3A is lost upon heating at 95 C for 30 minutes. Upon exposure to simulated mammalian gastric fluid containing pepsin, mCry3A rapidly degrades.

The native Cry3A protein has had a history of safe use as a component of spore preparations of the microbial insecticide *B. thuringiensis subsp. tenebrionis*, as an encapsulated component of a microbial insecticide derived from *B. thuringiensis subsp.* San Diego, and as a plant-incorporated protectant in Bt potato.

The genetic material occurring in the subject plant-incorporated protectant active ingredient has been adequately characterized. This genetic material (i.e., the nucleic acids DNA and RNA), including regulatory regions, necessary for the production of mCry3A in all corn will not present a dietary safety concern. ''Regulatory regions'' are the DNA sequences such as promoters, terminators, and enhancers that control the expression of the genetic material encoding the protein. Based on the ubiquitous occurrence and established safety of nucleic acids in the food supply, a tolerance exemption under the regulations has been established for residues of nucleic acids that are part of plant-incorporated protectants 40 CFR 174.475; 66 FR (139): 37817–37830, July 19, 2001. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of mCry3A protein in all corn.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Average mCry3A levels measured in grain from Event MIR604–derived hybrid field corn plants were less than one part per million (ppm) on a dry- or fresh-weight basis. Processed corn products or by-products used in food are unlikely to have measurable mCry3A protein, or will have only trace amounts. Oral exposure is not expected to result in adverse health effects, because of a demonstrated lack of toxicity to mammals and the rapid digestibility of the mCry3A protein. It is expected that any mCry3A protein consumed will be digested as conventional dietary protein.

ii. *Drinking water.* Little to no exposure via drinking water is anticipated. Due to the demonstrated mammalian safety profile of mCry3A, such exposure would not present a risk.

2. *Non-dietary exposure.* Non-dietary exposure is not anticipated, due to the proposed use pattern of the product. Exposure via dermal or inhalation routes is unlikely because the active ingredient is contained within plant cells. However, if exposure were to occur by non-dietary routes, no risk would be expected because the mCry3A protein is not toxic to mammals.

E. Cumulative Exposure

Because there is no indication of mammalian toxicity of the mCry3A protein or the genetic material necessary for its production, it is reasonable to conclude, that there will be no cumulative effects for this active ingredient.

F. Safety Determination

1. *U.S. population.* The lack of mammalian toxicity at high levels of exposure to the mCry3A protein demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated via consumption of all food commodities produced from corn plants that produce mCry3A. Moreover, little to no human dietary exposure to mCry3A protein is expected to occur via transformed corn. Due to the digestibility and lack of toxicity of the mCry3A protein, and its very low potential to become an allergen in food, dietary exposure, if it occurred, is expected to not pose any harm for the U.S. population. No special safety provisions are applicable for consumption patterns or for any population sub-groups.

2. *Infants and children.* Based on the mammalian safety profile of the active ingredient and the proposed use pattern, there is ample evidence to conclude a reasonable certainty of no harm to infants and children.

G. Effects on the Immune and Endocrine Systems

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

H. Existing Tolerances

The registrant is not aware of any existing tolerances or tolerance exemptions for mCry3A protein and the genetic material necessary for its production as an active ingredient. The applicant has previously submitted a petition (File Symbol 4G6808) for temporary exemption from tolerances for the same active ingredient concurrently with an application for an Experimental Use Permit for use of the active ingredient in Event MIR604 corn. Exemptions from tolerances exist for use of the native form of Cry3A protein as a plant-incorporated protectant in Bt potato (40 CFR 180.1147) and as a component of an encapsulated *Bacillus thuringiensis* microbial insecticide (40 CFR 180.1108).

I. International Tolerances

No codex maximum residue levels exists for the plant-incorporated protectant modified Cry3A protein and the genetic material necessary for its production in corn.

[FR Doc. 04–23586 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7830–6]

Florida Petroleum Reprocessors Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under Section 122(g)(4) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Environmental Protection Agency has offered a de minimis settlement at the Florida Petroleum Reprocessors Superfund Site (Site) located in Davie, Florida. EPA will consider public comments November 26, 2004. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement and Information Management Branch, Waste Management Division, 61 Forsyth St., SW., Atlanta, Georgia 30303, (404) 562–8887, email: *batchelor.paula@epa.gov.*

Written or email comments may be submitted to Paula V. Batchelor at the above address within 30 days of the date of publication.

Dated: October 13, 2004.

Anita Davis,

Acting Chief, Superfund Enforcement Information & Management Branch, Waste Management Division.

[FR Doc. 04–24042 Filed 10–26–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 19, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before December 27, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0600.

Title: Application to Participate in an FCC Auction.

Form No.: FCC Form 175.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 500.

Estimated Time per Response: 90 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 750 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The information collected on FCC Form 175 will be used by the Commission to determine if the applicant is legally, technically, and financially qualified to participate in an FCC auction. In addition, if the applicant applies for status as a particular type of auction participant pursuant to the Commission's rules, the Commission will use the information to determine if the applicant is eligible for the status requested. The Commission's auction rules and requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants, to deter possible abuse of the bidding and licensing process, and to enhance the use of competitive bidding to assign Commission licenses in furtherance of the public interest. Proposed revisions to current FCC Form 175 would revise the format for collecting information and incorporate into FCC Form 175 information previously collected in attachments. The Commission also proposes integrating ownership information collected in the FCC Form 175 with ownership information collected in other forms in order to reduce the need for applicants to file duplicative information. The preceding estimated time of response reflects the incorporation of previously separate information collections and is an average that will depend in part on whether the applicant has previously submitted ownership information on other integrated forms. The Commission plans to use this form for all upcoming auctions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24037 Filed 10–26–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2678]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

October 20, 2004.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by November 12, 2004. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338). Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98). Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147).

Number of Petitions Filed: 1.

Subject: In the Matter of Unbundled Access to Network Elements (CC Docket No. 04–313). Review of the Section 251 Unbundling Obligations of the Incumbent Local Exchange Carriers (CC Docket No. 01–338).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24036 Filed 10–26–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Friday, October 29, 2004. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION OF THE MEETING: *Process for Appointment of Federal Home Loan Bank Directors. Appointments to the Financing Corporation Directorate.*

MATTER TO BE CONSIDERED AT THE CLOSED PORTION OF THE MEETING: *Periodic Update of Examination Program Development and Supervisory Findings.*

CONTACT PERSON FOR MORE INFORMATION: Mary H. Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826, or by electronic mail at *gottliebm@fhfb.gov*.

Dated: October 25, 2004.

By the Federal Housing Finance Board.

Mark J. Tenhundfeld,

General Counsel.

[FR Doc. 04–24111 Filed 10–25–04; 11:50 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via email at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011764–001.

Title: Zim/Norasia/CSAV Slot Exchange Agreement.

Parties: Zim Integrated Shipping Services, Ltd.; Norasia Container Lines Limited and Compania Sud Americana de Vapores S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment revises Zim's corporate name.

Dated: October 22, 2004.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–24047 Filed 10–26–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 04-23556) published on page 61840 of the issue for Thursday, October 21, 2004.

Under the Federal Reserve Bank of St. Louis, heading, the entry for Russell Badgett, Jr. Irrevocable Trust, with Bentley F. Badgett, Jr., as trustee, both of Madisonville, Kentucky, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Russell Badgett, Jr. Irrevocable Trust, with Bentley F. Badgett, Jr. as trustee, both of Madisonville, Kentucky; to acquire voting shares of Hancock Bancorp, Inc., Hawesville, Kentucky, and thereby indirectly retain voting shares of Breckinridge Bank, Cloverport, Kentucky, and Hancock Bank & Trust Company, Hawesville, Kentucky.

In connection with this application, the Badgett Control Group, which consists of Russell Badgett, Jr., Madisonville, Kentucky; Russell Badgett, Jr. Irrevocable Trust, Madisonville, Kentucky; Bentley F. Badgett, individually and as trustee, Madisonville, Kentucky; Dr. C. B. Badgett, Lewisport, Kentucky; Russell Badgett III, Owensboro, Kentucky; Joseph Rockney Badgett, Madisonville, Kentucky; Nita Anne Smaldone, Nashville, Tennessee; and Claudia Badgett Riner, Louisville, Kentucky, also have applied to retain voting shares of Hancock Bancorp, Inc., Hawesville, Kentucky, and thereby indirectly retain voting shares of Breckinridge Bank, Cloverport, Kentucky, and Hancock Bank & Trust Company, Hawesville, Kentucky.

Comments on this application must be received by November 4, 2004.

Board of Governors of the Federal Reserve System, October 21, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–23983 Filed 10–26–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and

§ 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 10, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Ronald Beach, BMTW LLC; Annette Beach; Benjamin Beach; Hillary Beach; Linda Blunt; and Ruthen Hamilton, Lynchburg, Virginia; as a group acting in concert to acquire voting shares of Community First Financial Corporation, Lynchburg, Virginia, and thereby indirectly acquire voting shares of Community First Bank, Lynchburg, Virginia.

Board of Governors of the Federal Reserve System, October 21, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–23985 Filed 10–26–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 2004.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

The Bancorp, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of The Bancorp Bank, Wilmington, Delaware.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Liberty Financial, Inc., Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Middleburg Bancorp, Inc., Liberty, Kentucky, and Farmers Deposit Bank, Middleburg, Kentucky.

Board of Governors of the Federal Reserve System, October 21, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–23984 Filed 10–26–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 2004.

A. Federal Reserve Bank of Cleveland (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Park National Corporation, Newark, Ohio; to acquire First Clermont Bank, Milford, Ohio, and thereby engage in operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 21, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.04–23986 Filed 10–26–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Intervention and Evaluation Trials To Prevent Intimate Partner Violence

Announcement Type: New.

Funding Opportunity Number: RFA CE05–017.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates:

Letter of Intent Deadline: November 26, 2004.

Application Deadline: January 25, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under section 393(a) (3) of the Public Health Service Act (42 U.S.C. section 280b–1a(a)(3)) and 391(a)(1) of the Public Health Service Act, 42 U.S.C.

Background:

An estimated 1.9 million women are physically assaulted each year; three-quarters of those assaults are perpetrated by an intimate partner

(Tjaden & Thoennes, 2000). Among women, the lifetime prevalence of physical assault by an intimate partner is 22 percent (Tjaden & Thoennes, 2000). Over 1200 women were murdered by their intimate partners in 2001 (Rennison, 2003). Beyond mortality, partner violence exacts a very serious toll on women's physical and mental health, with consequences including injury, chronic pain, gynecological problems, stress-related problems, central nervous problems, anxiety, depression, and post-traumatic stress disorder (Campbell, 2002). Partner violence also produces serious negative sequelae on children who witness it. Children exposed to IPV are at increased risk for adverse short and long-term outcomes including: anxiety, depression, and stress symptoms; oppositional and aggressive behavior; low self-esteem (*e.g.*, Grych, Jouriles, Swank, McDonald, & Norwood, 2000; Margolin, 1998); deficits in social, relationship, and communication skills (*e.g.*, Huth-Bocks, Levendosky, & Semel, 2001); and later partner violence during adolescence and adulthood (Margolin, 1998; Valle & Silovsky, 2002; Wolfe & Jaffe, 1999). In addition to costs to individuals, the economic burden of partner violence on society is estimated at $5.8 billion per year in direct medical costs and lost productivity (CDC, National Center for Injury Prevention and Control, 2003). Given the scope and toll of partner violence on victims and society, empirically supported interventions to prevent partner violence are greatly needed. The scientific knowledge base regarding interventions to prevent IPV and reduce its negative impact is still developing, but the complex etiology and social ecology of intimate partner violence suggests that a range of interventions are needed to prevent IPV and to minimize its negative consequences.

Purpose: The purpose of the program is to conduct efficacy and effectiveness trials of intervention strategies to prevent intimate partner violence and/or its negative consequences, particularly studies of strategies that have not been well studied, for at-risk or underserved populations. This program addresses the ''Healthy People 2010'' focus area(s) of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for Injury Prevention and Control (NCIPC): Conduct a targeted program of research to reduce injury-related death and disability.

Special Guidelines for Technical Assistance:

Conference Call

Technical assistance will be available for potential applicants on one conference call.

The call for eligible applicants will be held on (December 10, 2004) from 2:30 p.m. to 4 p.m. (Eastern Time). The conference can be accessed by calling (888–528–9061) and entering access code (14836).

The purpose of the conference call is to help potential applicants:

1. Understand the Request for Application Process for RFA CE05–017 entitled ''Intervention and Evaluation Trials to Prevent Intimate Partner Violence''.

2. Understand the scope and intent of RFA CE05–017 entitled ''Intervention and Evaluation Trials to Prevent Intimate Partner Violence''.

3. Become familiar with the Public Health Services funding policies and application and review procedures. Participation in this conference call is not mandatory. At the time of the call, if you have problems accessing the conference call, please call 404–639–7550 for assistance.

Research Objectives

The current prevention and intervention strategies that have been evaluated have met with limited success (National Research Council 2004, Wathen & McMillen, 2003). A recent report from the National Research Council (2004) calls for more methodologically rigorous studies to evaluate strategies for primary, secondary, and tertiary prevention of IPV. Primary prevention strategies are those that take place before a violent act has occurred to prevent initial perpetration or victimization. Secondary prevention strategies are those that take place soon after a violent act has occurred to deal with the immediate consequences or further prevention of violence, while tertiary prevention strategies are those that take place over the longer-term to lessen the trauma or injury associated with violence (*e.g.*, rehabilitation, reintegration, *etc.*).

Although many service models and programs to address violence against women have been developed and implemented, the scope of those strategies and services has been limited. Often such programs exist in shelters and in the criminal justice system, and some programs do exist in non-traditional settings (*e.g.*, workplace). Very few target the primary prevention of violence, and most lack evidence of efficacy, effectiveness, or cost-effectiveness (*e.g.*, Graham-Bermann, 2001). In addition, the few that have been rigorously evaluated have shown limited impact (IOM report, National Research Council, 2004). Given the complex etiology of the development of partner violence, and the complex psychological and social/ecological needs of its victims, a broader range of intervention strategies must be developed and rigorously evaluated. Thus, one of the research objectives of this announcement is to expand the set of intervention programs and strategies that address IPV.

Innovative interventions are needed that employ new settings for intervention, new strategies for prevention, and address the complex social-ecological factors involved in IPV. Thus, research that examines the efficacy and effectiveness, including cost effectiveness, of the following types of strategies will be considered under this announcement:

- Workplace interventions derived from evidence-based violence research for the prevention of IPV, particularly primary prevention interventions that focus on populations at high risk for the victimization and perpetration of IPV, and that propose appropriate economic analyses.
- Housing intervention programs that provide permanent or extended-stay housing and other services to mothers (and their children) at risk for revictimization of IPV, particularly evaluation studies that examine the effects of housing interventions separately from the impact of other services as usual, or any additional services offered to mothers or children (*e.g.*, job training, education, case management).
- Other innovative primary prevention interventions (*e.g.*, the types of primary prevention strategies that have demonstrated effectiveness with youth violence) to prevent first-time victimization or perpetration of intimate partner violence.

Note: For this third priority, evaluations of dating violence interventions are excluded. For applicants interested in dating violence interventions, please see program announcement 05019.

Research funded under this announcement is expected to adhere to high scientific standards and to incorporate the following elements:

- Interventions and measures appropriate to the developmental level(s) and cultural/ethnic backgrounds of the population of interest. That is, interventions that are developmentally and culturally appropriate.
- Interventions that are theoretically justified (*i.e.*, include a conceptual

model or theory of change, with proposed mediators and moderators, for how the intervention will produce the intended reductions in intimate partner violence and related risk and protective factors), and supported with epidemiologic, methodologic, behavioral, health promotion, and risk prevention research.

• Stringent and rigorous evaluation designs, namely experimental and quasi-experimental designs with appropriate baseline/pre-intervention data, post-intervention data, and at least one follow-up data collection point; data from at least one comparison or control community; and data collected from multiple sources.

• Robust evaluation designs that collect and analyze process data (*e.g.*, direct assessment of intervention fidelity and program exposure) and outcome and/or economic data associated with the intervention using measures with documented validity and/or reliability. Measurement is expected to match the level of intervention. Examples of levels of measurement include: individual (*e.g.*, behavioral measures of violent victimization and/or perpetration, quality of life, medical utilization and costs, productivity), family (*e.g.*, family functioning, marital discord), and community (*e.g.*, hospital or police data relevant to intimate partner violence, school or workplace data, social capital, economic indices). Whenever possible, multiple sources (self-report, other-report, direct observation, and/or archival records) are used to collect data on each outcome selected. Economic data include the systematic collection and analysis of programmatic costs required to implement the intervention from the perspective of the individual (*e.g.*, time required to participate in the intervention), and to the larger community (*e.g.*, utilization and costs required by schools, workplaces, neighborhoods, and society). Appropriate measures of risk and protective factors for intimate partner violence are included to allow for an examination of mediating and moderating effects.

• Data analytic plans that are appropriate to the intervention, research design and hypotheses, data collection measures, and project period, and that anticipate and evaluate the effect of threats to the internal and external validity of the specified research design.

• Implementation plans that ensure the intervention is implemented as it was designed (*i.e.*, intervention fidelity) and that the target population received the intervention (*i.e.*, program exposure).

Activities

Awardee activities for this program are as follows:

1. Develop and finalize research design and methodology, data collection measures, methods, and analysis plan.

2. Develop a research protocol for Institutional Review Board (IRB) review and approval by all cooperating institutions participating in the research project.

3. Develop a standardized established protocol for the intervention. The proposed intervention must reflect cultural sensitivity and responsiveness.

4. Provide an evaluation plan for the intervention.

5. Implement the proposed intervention.

6. Collect data on program implementation including, as appropriate, exposure to the intervention and fidelity of the intervention.

7. Collect data on the costs of implementation of the intervention.

8. Pilot test data collections instruments, if necessary.

9. Analyze data and disseminate findings through peer review journals and presentations.

10. Conduct one reverse-site visit to meet with CDC staff in Atlanta on an annual basis.

11. Complete all required reports as specified under section VI.3 Reporting.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program will be conducted through direct consultation via monthly conference calls, site visits, and e-mail communications, and are as follows:

1. CDC will collaborate with project staff on decision-making regarding research design and methodology, data collection and analyses, programmatic issues, and dissemination of the study results in publications and presentations.

2. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all performance sites involved in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U49 (research cooperative agreement).

Fiscal Year Funds: 2005.

Approximate Total Funding: $1,800,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: 3–6.

Approximate Average Award: Awards are anticipated to range from $300,000 to $600,000, with an average award of $450,000.

Floor of Award Range: None.

Ceiling of Award Range: $600,000 (Ceilings are for the first 12-month budget period and include both indirect and direct costs.)

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit, and for profit organizations and by governments and their agencies, such as:

• Public nonprofit organizations,
• Private nonprofit organizations,
• For profit organizations,
• Small, minority, women-owned businesses,
• Universities,
• Colleges,
• Research institutions,
• Hospitals,
• Community-based organizations,
• Faith-based organizations,
• Federally recognized Indian tribal governments,
• Indian tribes,
• Indian tribal organizations,
• State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau),
• Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the State as eligible to submit an application under the State eligibility in lieu of a State application. If you are applying as a bona fide agent of a State or local government, you must provide a letter from the State or local government as

documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, which includes both direct and indirect costs, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing violence prevention research in peer-reviewed journals.
- Effective and well-defined working relationships within the performing organization and with outside entities expected to participate in the proposed research that will ensure implementation of the proposed activities, as evidenced by letters of support from the performing organization and outside entities (include in appendices).
- The overall match between the applicant's proposed research objectives and the program priorities as described under the heading, ''Research Objectives''.
- Late applications will be considered non-responsive. *See* section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible To Become Principal Investigators

Principal Investigator qualifications are as follows:

- A principal investigator who has documented prior training and experience in conducting efficacy and effectiveness trials as evidenced by peer-reviewed publications of such studies, and current or previous research grants for efficacy or effectiveness trials.
- A principal investigator who has conducted violence prevention research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

Applications, which do not meet the above requirements, will be considered non-responsive.

Any individual with the skills, knowledge, and resources necessary to carry out the proposed injury research as outlined above is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Principal investigators are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per principal investigator will be funded under this announcement.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site. Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: 2.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Announcement.
- Identify which of the priority research areas the application will address: (1) Workplace interventions; (2) housing interventions, or (3) other primary prevention interventions (please specify the nature and type).

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714.

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call 1–866–705–5711.

This announcement uses the non-modular budgeting format. Provide a detailed budget for each activity with accompanying justification of all operating expenses that is consistent with the stated objectives and planned activities of the project.

In addition to the instructions provided in the PHS 398 for writing the Description on page 2 of the PHS 398 form, structure the Description using the following components: (1) Statement of the problem, (2) Purpose of the proposed research, (3) Methods, including study population, data sources and any statistical analyses to be performed, and (4) Implications for prevention. The Description (abstract) should answer the following questions:

- Does the Description state the hypothesis?
- Does the Description describe the objectives and specific aims?
- Does the Description state the importance of the research and how it is innovative?
- Does the Description outline the methods that will use to accomplish the goals?

• Is the language of the Description simple and easy to understand for a broad audience?

Please follow the content requirements below in developing your research plan instead of those listed for the Research Plan in the PHS 398.

The research plan should consist of the following information:

1. Purpose of the proposed research: Describe the goals and objectives the proposed research. Specific research questions, hypotheses, and implications for prevention should also be included.

2. Program Participants: Describe the demographic and geographic characteristics of the community or population targeted by the intervention. This section should include incidence, prevalence, morbidity, and/or mortality rates of intimate partner violence within the target community or population. In addition, the proposal should provide evidence that the recipient (or collaborating partner) has access to the target population, and that the participation by the target population or community in the intervention will be adequate.

3. Intervention: Describe the proposed strategies or components of the intervention and the plan for implementing the intervention. Proposals should explicate the theoretical and empirical justification for the potential effectiveness of the intervention for reducing intimate partner violence, its negative consequences, or other appropriate outcomes in the target community or population. This should include a discussion of the modifiable risk and protective factors that will be influenced by the intervention of interest. The proposal should describe the location or setting in which the intervention component(s) will occur, and describe the relevance of this setting to the strategy and desired outcomes. The proposal should also describe how intervention fidelity would be monitored and measured.

4. Methods: Describe the proposed evaluation design, data sources, methods, and analysis plan for assessing the efficacy or effectiveness, and/or cost-effectiveness of the intervention. The specific type of evaluation method chosen should reflect the nature of the intervention, feasibility, and ethical considerations. Potential threats to the validity of the study should be described along with how such threats will be recognized and addressed. The status of all necessary measurement instruments should be described. If any materials are not extant, the methods and time frame for measure development, pilot testing, and validation should be given. For data collected from archival records (*e.g.*, hospital records, police records, employee leave records, *etc.*), the proposal should discuss issues of accessibility, reliability, and validity of those data.

5. Project Management: Provide evidence of the expertise, capacity, and community support necessary to successfully implement and evaluate the impact of the intervention. Existing and proposed positions for the project should be described by title, function, general duties, level of effort and allocation of time. Management operation principles, structure, and organization should also be noted.

6. Collaborative Efforts: List and describe any current or proposed collaboration with government, health, community-or faith-based organizations, minority organizations, and/or other researchers and academic institutions. Include letters of support and memoranda of understanding that specify the nature of past, present, and proposed collaborations, and the products/services/activities that will be provided by and to the applicant.

The research plan should be no more than 25 pages (8.5″ × 11″ in size), single-spaced, printed on one side only, with one-inch margins on all sides, and unreduced 12-point font.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: November 26, 2004.

CDC requests that you send a LOI if you intend to apply for to this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: January 25, 2005.

Explanation of Deadlines: If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application is not received in the CDC Procurement and Grants office by the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

• Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.

• Reimbursement of pre-award costs is not allowed.

• Funds are for research purposes only and cannot be used to provide or subsidize housing or other services for program participants.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Address for Express Mail or Delivery Service: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

Address for U.S. Postal Service Mail: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341; Telephone: 770–488–4037, Fax: 770–488–1662.

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—PA 05017, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and four copies of all appendices must be sent to:

Address for Express Mail or Delivery Service: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

Address for U.S. Postal Service Mail: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field? How well justified is the significance of the study?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Is the selection of a research design justified, and is the research design appropriate to answer the research question? Does the evaluation design reflect a rigorous examination of the effectiveness of the intervention? Are descriptions of sampling methods, sample size and power estimates, and data collection measures well-described and justified? How complete are planned investigations of intervention fidelity and program exposure? Are the outcome measures concrete, specific, and directly relevant to intimate partner violence? Does the data analytic plan appropriately consider the level of intervention and data collection, and the longitudinal design of the study?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Does the investigator have relevant knowledge and experience to develop and/or evaluate the proposed intervention? Is there evidence of the cultural sensitivity/competence of the research team and supporting organizations? Is there evidence of a working relationship between the principal investigator and research team and the community or population targeted?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? If collaborations are being proposed, are the partners and their skills and expertise well described? Can proposed collaborations reasonably be expected to improve the quality of the implementation and evaluation of the intervention?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Intervention: Is the potential effectiveness of the proposed intervention within the target population theoretically justified and supported with epidemiological, methodological, behavioral and/or economic research? How feasible is the implementation of the intervention as proposed? Can the intervention reasonably be predicted to produce the expected reductions in intimate partner violence? Is the setting of implementation appropriate? Where appropriate, does the intervention focus on communities or individuals with increased risk for IPV? Is the intervention developmentally and culturally sensitive?

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Inclusion of Children as Participants in Research Involving Human Subjects: The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998. NCIPC has adopted this policy for this announcement.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the

inclusion of children as participants in research involving human subjects.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by the National Center for Injury Prevention and Control. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by the National Center for Injury Prevention and Control in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive, if deemed to have the highest scientific merit, a second programmatic level review by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC).

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by an external peer review committee, the NCIPC and Control Initial Review Group (IRG), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRG. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive would be further evaluated by a dual review process.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRG, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

The primary review will be an external peer review conducted by the IRG. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application.

The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the ACIPC. The external ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The secondary review committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.''

d. Budgetary considerations.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities (workplace, housing, and primary prevention interventions).
- Geographic diversity.
- Racial/ethnic diversity.
- Balance of intervention approaches and strategies.
- Consistency with research priorities in CDC's Injury Research Agenda.
- Availability of funds within categories of violence and injury funding streams.

V.3. Anticipated Announcement and Award Dates

August 31, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration Web site.

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions

- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–21 Small, Minority, and Women-Owned Business
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements

Additional information on AR–1 through AR–24 can be found on the CDC Web site.

- AR–25 Release and Sharing of Data

Starting with the December 1, 2004 receipt date, all ''Requests for Applications (RFA)/Program Announcements (PA)'' soliciting proposals for individual research projects of $500,000 or more in total (direct and indirect) costs per year require the applicant to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. For this proposal, those applicants requesting ≥$450,000 will be required to write a brief paragraph describing their data sharing/release plan or justification as to why they will not be sharing their data. Details on data sharing and release, including information on the timeliness of the data and the name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing and release may also be appropriate in other sections of the application (*e.g.* background and significance, or human subjects requirements). The content of the data sharing and release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing and release plan will not count toward the application page limit and will not factor into the determining scientific merit or the priority scoring. Investigators should seek guidance from their institutions on issues related to institutional policies, and local IRB rules, as well as local, State and Federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or by visiting the NCIPC Web site.

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2500 to 5000 words) summary highlighting the findings and their implications for injury prevention programs, policies, etc., that includes a plan for dissemination of the research findings. The dissemination plan will include publications in peer-reviewed journals and other methodologies for sharing results with stakeholders outside of academic settings (*e.g.*, state and community groups, public health injury prevention practitioners).

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; Telephone: 770–488–2700.

For scientific/research issues, contact: Jennifer Wyatt, Ph.D., Extramural Program Official, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–60; Telephone: 770–488–4058, E-mail: *ANU1@cdc.gov*.

For questions about peer review, contact: Gwendolyn Cattledge, Ph.D., Scientific Review Administrator, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02; Telephone: 770–488–1430, E-mail: *gxc8@cdc.gov.*

For financial, grants management, or budget assistance, contact: Nancy Pillar, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, E-mail: *Nfp6@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: October 20, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24026 Filed 10–26–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Research Grants To Prevent Unintentional Injuries

Announcement Type: New.

Funding Opportunity Number: CE05–022.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates:

Letter of Intent Deadline: November 26, 2004.

Application Deadline: January 25, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391(a) [42 U.S.C. 280b(a)] of the Public Service Health Act, as amended.

Purpose: The purposes of the program are to:

- Solicit research applications that address the priorities reflected under the heading, ''Research Objectives''.
- Build the scientific base for the prevention and control of fatal and nonfatal injuries and related disabilities.
- Encourage professionals from a wide spectrum of disciplines of epidemiology, behavioral and social sciences, medicine, biostatistics, public health, law, criminal justice, and engineering to perform research in order to prevent and control injuries more effectively.
- Encourage investigators to propose research that: involves intervention development and testing as well as research on methods; enhances the adoption and maintenance of effective intervention strategies among individuals, organizations, or communities.

This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for Injury Prevention and Control (NCIPC):

- Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.
- Monitor and detect fatal and non-fatal injuries.
- Conduct a targeted program of research to reduce injury-related death and disability.

Research Objectives: NCIPC is soliciting investigator-initiated research that will help expand and advance our understanding of what works to prevent unintentional injuries. The following research themes are the focus of this solicitation: (Applications that fail to address one of these six research objectives will be considered non-responsive.)

1. Develop a theory-based intervention for use of supervision of children to reduce unintentional injury outcomes.

2. Evaluate existing and develop new methods to obtain exposure and injury incidence data for sports, exercise and recreation-related injuries.

3. Identify risk and protective factors related to injury from childhood falls, crashes involving young drivers or related to motor vehicle and pedestrian travel of older adults.

4. Evaluate the effectiveness of environmental, behavioral, legislative or regulatory interventions to prevent pedestrian injuries or injuries related to sports, exercise, and recreation (including drowning).

5. Assess how tailoring, training, packaging, feasibility (and other dimensions of an effective intervention or policy) would promote greater adoption, usability and uptake, especially for interventions that impact older adult falls injury, transportation safety, and sports & recreation injury prevention (including drowning).

6. Evaluate theory-based strategies to increase dissemination of effective interventions that reduce injuries related to transportation, at home, or during recreation.

For more information on these research objectives, see Attachment 2 of this announcement. The attachment is posted along with this announcement on the CDC website: *http://www.cdc.gov/ncipc/ncipchm.htm.*

Rigorous evaluations are needed to determine the effectiveness of interventions, programs, and policies addressing the prevention of injury. Experimental designs are strongly encouraged. However, NCIPC will consider other evaluation designs, if justified, as required by the needs and constraints in a particular setting.

For effective interventions, it is possible to do cost-effectiveness studies. To be comparable to other cost effectiveness studies, they should follow the guidelines in the following references:

Gold MR, Siegel JE, Russell LB, Weinstein MC. Cost-effectiveness in Health and Medicine. New York: Oxford University Press, 1996.

Haddix AC, Teutsch SM, Corso, PS. Prevention Effectiveness: A Guide to Decision Analysis and Economic Evaluation. Second Edition. New York: Oxford University Press, 2003.

For randomized trials, applicants are encouraged to clearly state how study subjects, whether individuals or groups, were selected, randomized, and followed through the trial. One relevant useful guidance document is Moher D, Schulz KF, Altman D, The CONSORT Statement, JAMA 2001; 285:1987–2001.

II. Award Information

Type of Award: Grant.

Mechanism of Support: R49.

Fiscal Year Funds: 2005.

Approximate Total Funding: $600,000 (This amount is an estimate, and is subject to availability of funds).

Approximate Number of Awards: Two.

Approximate Average Award: $300,000 (This amount is for the first 12-month budget period and includes both direct and indirect costs. Approximately $900,000 is expected to be available over the three-year project period).

Floor of Award Range: None.

Ceiling of Award Range: $300,000 (This amount is for the first 12-month budget period and includes both direct and indirect costs. Approximately $900,000 is expected to be available over the three-year project period).

Anticipated Award Date: August 30, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

Consideration will also be given to current grantees that submit a competitive supplement application requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianas Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

It is especially important that the abstract of your grant application (Description, PHS 398 form page 2) reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Special Requirements: If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. *See* section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- Grant applications must demonstrate an overall match between the applicant's proposed theme and research objectives and the program priorities as described under the heading, ''Research Objectives.''
- Applications must demonstrate effective and well-defined working relationships within the performing organization and with outside entities, which will ensure implementation of the proposed activities.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible To Become Principal Investigators:

- A principal investigator who has conducted injury prevention and control research, published the findings in a peer-reviewed journal, and has specific authority and responsibility to carry out the proposed project.
- The ability of the principal investigator to carry out injury control research projects as defined under Attachment 1 of this program announcement. The attachment is posted with this announcement on the CDC website: *http://www.cdc.gov/ncipc/ncipchm.htm.*

Applications, which do not meet the above requirements, will be considered non-responsive.

Any individual with the skills, knowledge, and resources necessary to carry out the proposed injury research as outlined above is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Principal investigators are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per principal investigator will be funded under this announcement.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC website, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) website at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Single spaced.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, email address, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement.
- Brief description of the scope and intent of the proposed research work.

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC website at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This announcement uses the non-modular budgeting format. Follow the PHS–398 instructions for non-modular budget research grant applications.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application, which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

In addition to the instructions provided in the PHS 398 for writing the Description on page 2 of the PHS 398 form, structure the Description using the following components:

- Statement of the problem.
- Purpose of the proposed research.
- Methods, including study population, data sources and any statistical analyses to be performed.
- Implications for prevention.

The Description (abstract) should answer the following questions:

- Does the Description state the hypothesis?
- Does the Description describe the objectives and specific aims?
- Does the Description state the importance of the research and how it is innovative?
- Does the Description outline the methods that will be used to accomplish the goals?

• Is the language of the Description simple and easy to understand for a broad audience?

You must include a research plan in your application. The research plan should be no more than 25 pages, printed on one side, single spaced, with one half-inch margin, and unreduced 12-point font. The research plan should address activities to be conducted over the entire project period. Use the information in the Research Objectives, Administrative and National Policy Requirements, and Application Review Information sections to develop the application content. The research plan should include the following information:

• The project's focus, a justification for the research proposed, and a description of the scientific basis for the research. The focus should be based on recommendations in ''Healthy People 2010'' (*http://www.healthypeople.gov*) and the ''CDC Injury Research Agenda,'' (*http://www.cdc.gov/ncipc/pub-res/research_agenda/agenda.htm*) and should seek creative approaches that will contribute to a national program for injury control.

• Specific, measurable, and time-framed objectives.

• A detailed plan describing the methods, which will achieve the objectives, including their sequence. A comprehensive evaluation plan is an essential component of the application.

• A description of the principal investigator's role and responsibilities.

• A description of those activities related to, but not supported by, the grant.

• A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

• An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from project start-up.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

For additional help in preparing your grant application please see the ''frequently asked questions'' section on the NCIPC webpage at: *http://www.cdc.gov/ncipc/res-opps/2004pas.htm.*

IV.3. Submission Dates and Times

LOI Deadline Date: November 26, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: January 25, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office (PGO) (not NIH) by 4 p.m. Eastern Time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and grant application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

• Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board (IRB) approvals are in place.

• Grant funds will not be made available to support the provision of direct care.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: NCIPC Extramural Resources Team, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341, Telephone: 770–488–4037, Fax: 770–488–1662, E-mail: *CIPERT@CDC.GOV.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management—CE05–022, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and four copies of all appendices must be sent to: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control.

Address for Express Mail or Delivery Service: 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

Address for U.S. Postal Service Mail: 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to improve the control and prevention of disease and injury and to enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Is there a prior history of conducting injury-related research?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Dissemination: What plans have been articulated for disseminating findings?

Protection of Human Subjects From Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Inclusion of Children as Participants in Research Involving Human Subjects: The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998. NCIPC has adopted this policy for this announcement.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the inclusion of children as participants in research involving human subjects that is available at *http://grants.nih.gov/grants/funding/children/children.htm*.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the PGO and for responsiveness by NCIPC. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review panel convened by the NCIPC in accordance with the review criteria listed above. As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.

The primary review will be a peer review conducted by NCIPC Initial Review Group (IRG). Applications may be subjected to a preliminary evaluation (streamline review) by the IRG to determine if the application is of sufficient technical and scientific merit to warrant further review. NCIPC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by the IRG. These applications will be reviewed for scientific merit using current NIH criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application.

The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The ACIPC committee's responsibility is to develop funding recommendations for the NCIPC Director based on the

results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

- The results of the primary review including the application's priority score as the primary factor in the selection process.
- The relevance and balance of proposed research relative to the NCIPC programs and priorities.
- The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010,'' the Institute of Medicine report, ''Reducing the Burden of Injury,'' and the ''CDC Injury Research Agenda.'' (*See* Attachment 1, Resource Materials. The attachment is posted along with this announcement on the CDC Web site: *http://www.cdc.gov/ncipc/ncipchm.htm.*)
- Budgetary considerations.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRG, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the ACIPC, consultation with NCIPC senior staff, and the availability of funds.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRG. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRG and the secondary review group.

Continued Funding

Continuation awards made after FY 2005, but within the project period, will be made on the basis of the availability of funds and the following criteria:

- The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress is being demonstrated through presentations at work-in-progress monitoring workshops (travel expenses for this annual one-day meeting should be included in the applicant's proposed budget).
- The objectives for the new budget period are realistic, specific, and measurable.
- The methods described will clearly lead to achievement of these objectives.
- The evaluation plan will allow management to monitor whether the methods are effective.
- The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

V.3. Anticipated Announcement and Award Dates

August 30, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR—1 Human Subjects Requirements.
- AR—2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR—3 Animal Subjects Requirements.
- AR—9 Paperwork Reduction Act Requirements.
- AR—10 Smoke-Free Workplace Requirements.
- AR—11 Healthy People 2010.
- AR—12 Lobbying Restrictions.
- AR—13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR—21 Small, Minority, and Women-Owned Business.
- AR—22 Research Integrity.

Additional information on AR–1 through AR–22 can be found on the CDC website at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

- AR—25 Release and Sharing of Data.

Starting with the December 1, 2003 receipt date, all ''Requests for Applications (RFA)/Program Announcements (PA)'' soliciting proposals for individual research projects of $500,000 or more in total (direct and indirect) costs per year require the applicant to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing and release, including information on the timeliness of the data and the name of the project data steward, should be included in a brief paragraph immediately following the ''Research Plan'' section of the PHS 398 form. References to data sharing and release may also be appropriate in other sections of the application (*e.g.,* background and significance, or human subjects requirements) The content of the data sharing and release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing and release plan will not count toward the application page limit and will not factor into the determining scientific merit or the priority scoring. Investigators should seek guidance from their institutions on issues related to institutional policies, and local IRB rules, as well as local, state and federal laws and regulations, including the Privacy Rule.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or by visiting the NCIPC Internet at *http://www.cdc.gov/ncipc/osp/sharing_policy.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.
d. Budget.
e. Measures of Effectiveness.
f. Additional Requested Information.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.
4. At the completion of the project, the grant recipient will submit a brief summary 2,500 to 4,000 words written in non-scientific [laymen's] terms. The narrative should highlight the findings and their implications for injury prevention programs, policies, environmental changes, *etc.* The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Paul Smutz, Ph.D, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE. Mailstop K–02, Telephone: 770–488–1508, E-mail: *wsmutz@cdc.gov.*

For questions about peer review, contact: Gwendolyn Cattledge, Ph.D, Scientific Review Administrator, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02, Telephone: 770–488–1430, E-mail: *gxc8@cdc.gov.*

For financial, grants management, or budget assistance, contact: Nancy Pillar, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770/488–2721, *E-mail: NFP6@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC website, Internet address: *www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: October 21, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24025 Filed 10–26–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Disease

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 committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 9 a.m.—5:30 p.m., December 9, 2004. 8:30 a.m.–2 p.m., December 10, 2004.

Place: CDC, Auditorium B, Building 1, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters To Be Discussed: Agenda items will include:
1. Opening Session: NCID Update
2. Futures Initiative Update
3. Environmental Microbiology
4. IT Consolidations/Bioinformatics Center
5. Veterinary-Human Public Health Interface
6. Global Disease Detection Initiative
7. Topic Updates
   a. Influenza
   b. Pneumococcal Disease
   c. Genetics Initiatives
8. Board meets with Director, CDC

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board May 2004; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

For Further Information Contact: Tony Johnson, Office of the Director, NCID, CDC, Mailstop E–51, 1600 Clifton Road, NEO, Atlanta, Georgia 30333, e-mail *tjohnson3@cdc.gov;* telephone 404/498–3249.

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: October 20, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24024 Filed 10–26–04; 8:45 am]

BILLING CODE 4163–18–P

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 Initial Review Group. Subcommittee A—Cancer Centers.

Date: December 10, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Conference Centers, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: David E. Maslow, PhD., Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8117, Bethesda, MD 20892–7405, (301) 496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Causes 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: October 29, 2004.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23975 Filed 10–26–04; 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 Initial Review Group. Subcommittee A—Cancer Centers, Cancer Center Applications.

Date: April 7–8, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: David E. Maslow, PhD, Chief, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard—Room 8117, Bethesda, MD 20892–8328, (301) 496–2330.

(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: October 19, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23978 Filed 10–26–04; 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 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 would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: December 9, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Rm 8115, Bethesda, MD 20892, (301) 496–7413.

(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: October 19, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23979 Filed 10–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 of commercial property such as patentable material, and personal information concerning individuals associated with 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, Special Emphasis Panel On Nutrition.

Date: November 19, 2004.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton-Silver Spring, 8727 Colesville Road, Quorium Room, Silver Spring, MD 20910.

Contact Person: Judy S. Hannah, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7190, 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: October 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23980 Filed 10–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, 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 Human Genome Research Institute.

Date: November 14–16, 2004.

Open: November 14, 2004, 6:30 p.m. to 7:45.

Agenda: To discuss matters of program relevance.

Place: Eisenhower Inn and Conference Center, Gettysburg, PA.

Closed: November 14, 2004, 7:45 p.m. to adjournment on November 16, 2004.

Agenda: To review and evaluate personal qualifications and performances and competence of individual investigators.

Place: Eisenhower Inn and Conference Center, Gettysburg, PA.

Contact Person: Claire Rodgaard, Assistant to the Scientific Director, Division of Intramural Research, Office of the Director, National Human Genome Research Institute, 45 Convent Drive, Building 49, Room 4P06, Bethesda, MD 20892, (301) 435–5802.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: October 19, 2004.

Laverne Stringfield,

Director, Office of Federal Advisory Policy.

[FR Doc. 04–23972 Filed 10–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following 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 Child Health and Human Development Special Emphasis Panel, Specialized Cooperative Centers Program in Reproduction Research.

Date: November 18–19, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435-6884. *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 29, 2004.

LaVerne Y. Stringfield

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23974 Filed 10–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, Translational Research in Behavioral Science.

Date: November 16, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Bettina D. Acuna, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *acunab@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Research Infrastructure.

Date: November 22, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20090.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

(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: October 19, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23976 Filed 10–26–04; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group Acquired Immunodeficiency Syndrome Research Review Committee.

Date: November 30–December 1, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, Rm 3130, Bethesda, MD 20892–7616, (301) 496–7966, *rb169n@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 19, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23977 Filed 10–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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: Minority Programs Review Committee, MBRS Review Subcommittee B.

Date: November 15–16, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Shiva P Singh, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12C, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Programs No. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS.)

Dated: October 19, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23981 Filed 10–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; 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 Advisory Committee on Research on Women's Health.

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: Advisory Committee on Research on Women's Health.

Date: November 18, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: Provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office, and for discussion of scientific issues.

Place: National Institutes of Health, Building 1, 1 Center Drive, Wilson Hall, Bethesda, MD 20892.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, (301) 402–1770.

Any interested person may file written comments with the comittee 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: *www4.od.nih.gov/orwh/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 19, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23973 Filed 10–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, PFC and Cognition.

Date: November 5, 2004.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.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: Renal and Urological Studies Integrated Review Group, Pathobiology of Kidney Disease Study Section.

Date: November 8–9, 2004.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.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: AIDS and Related Research Integrated Review Group, Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

Date: November 9–10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Jose H. Guerrier, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1137, *guerriej@csr.nih.gov*.

Contact Person: Center for Scientific Review Special Emphasis Panel, Bacterial Diseases Food Safety and General Microbiology.

Date: November 9–10, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW, Washington, DC 20037.

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Assays and Methods Development.

Date: November 9–10, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ping Fan, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–435–1740, *fanp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biophysical and Biochemical Sciences Fellowships Panel.

Date: November 9–10, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW, Washington, DC 20009.

Contact Person: Nuria E. Assa-Munt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3120, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Epidemiology of Clinical Disorders and Aging.

Date: November 9, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P Street NW., Washington, DC 20037.

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *elwoodwi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Language, Cognition and Brain Function.

Date: November 9, 2004.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Lynn T Nielsen-Bohlman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089F, MSC 7848, Bethesda, MD 20892, (301) 594–5287, *nielsenl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cardiovascular Epidemiology.

Date: November 9, 2004.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Adult and Child Psychopathology, Disorders and Mental Health.

Date: November 9, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Dana Jeffrey Plude, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, (301) 435–2309, *pluded@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR Pharmacology.

Date: November 9, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jerome R. Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–2507, *wujekjer@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Therapy for Head and Neck Cancer.

Date: November 9, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 435–0131, *forryscs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Alcohol and Development.

Date: November 9, 2004.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict and Fellowship Applications Review.

Date: November 10, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1775, *rubertm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Drugs of Abuse and Neurotoxicity (ZRG1 IFCN C(03)).

Date: November 10, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Selmanoff, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, (301) 435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR Sensory/Aging ZRG1 IFCN–E (15)H.

Date: November 10, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Ethanol and GABA.

Date: November 10, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR Member Conflicts.

Date: November 10, 2004.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, (301) 435–1172, *livingsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Gene Regulation.

Date: November 11–12, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rolf Menzel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Endothelial/Leukocyte Biology.

Date: November 11, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR Addiction Related Prevention and Education.

Date: November 12, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Gayle M. Boyd, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 10143–3, MSC 7759, Bethesda, MD 20892, 301–451–9956, *gboyd@scsr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Interpersonal Processes, Psychosocial Risk and Personality.

Date: November 12, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128 MSC 7759, Bethesda, MD 20892, 301–496–0726. *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HOP H 11B—Occupational Health Small Business.

Date: November 12, 2004.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7816, Bethesda, MD 20892, 301–435–3562, *raffertc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reproductive Biology.

Date: November 12, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Learning and Memory (IFCN–C (02).

Date: November 12, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Selmanoff, PhD, Scientific Review Administrator, Center for Scientific Review. National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, (301) 435–1119, *mselmanoff2csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reproductive/Pediatric Epidemiology.

Date: November 12, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Stress and Drugs.

Date: November 12, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Dynamics.

Date: November 12, 2004.

Time: 12:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777, *zouai@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23970 Filed 10–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, Bacterial Pathogensis: Gram—Postive Pili.

Date: October 22, 2004.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, (301) 435–0903, *millsm@csr.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: Center for Scientific Review Special Emphasis Panel, ZRG1 BIO 01Q: Biochemistry: Quorum.

Date: October 29, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alec S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040, MSC 7840, Bethesda, MD 20892, (301) 869–8266, *liacoura@csr.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: Center for Scientific Review Special Emphasis Panel, Dental Small Business.

Date: November 1, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Daniel F. McDonald, PhD, Chief, Renal and Urological Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.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: Center for Scientific Review Special Emphasis Panel, Reading and Math Disabilities.

Date: November 1, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0676, *siroccok@csr.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: Center for Scientific Review Special Emphasis Panel, Chemoprevention of Prostate Cancer.

Date: November 2, 2004.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.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: Center for Scientific Review Special Emphasis Panel, Vector Biology.

Date: November 5–6, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Miami Beach Resort, Miami Beach, FL 33140.

Contact Person: John C. Pugh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.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: Center for Scientific Review Special Emphasis Panel, ZRG1 ICP–2 51R: PAR–04–083: Fogarty International Collaborative Trauma and Injury, Research Training Program.

Date: November 5, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, (301) 594–6830, *gerendad@csr.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: Center for Scientific Review Special Emphasis Panel, ZRG1 BPC–C (31) Shared Instrumentation Panel.

Date: November 5, 2004.

Time: 8 a.m to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW, Washington, DC 20009.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, (301)–435–1217, *byrnesn@csr.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: Center for Scientific Review Special Emphasis Panel, Technologies for Environmental Monitoring.

Date: November 5, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Administrator Intern, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, (301) 435–2902, *gubina@csr.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: Center for Scientific Review Special Emphasis Panel, Streptococcus Pathogenesis.

Date: November 5, 2004.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tera Bounds, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 3015–D, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *boundst@csr.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: Center for Scientific Review Special Emphasis Panel, Hearing Loss: Molecular Mechanisms.

Date: November 5, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.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: Center for Scientific Review Special Emphasis Panel, Special Topics in Driving, Attention, and Aging.

Date: November 5, 2004.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drice, Room 3192, MSC 7848, Bethesda, MD 20892, (301) 435–2309, *pluded@csr.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: Center for Scientific Review Special Emphasis Panel, Myelofibrosis.

Date: November 5, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.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: Center for Scientific Review Special Emphasis Panel, Auditory Cortex: Physiology and Plasticity.

Date: November 5, 2004.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.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: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: November 7–9, 2004.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *meyerjl@csr.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: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.

Date: November 7–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Priscilla B. Chen, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.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: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: November 8–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@csr.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: Center for Scientific Review Special Emphasis Panel, Cancer Drug Development and Therapeutics.

Date: November 8–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 451–0132, *zouzhiq@csr.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: AIDS and Related Research Integrated Review Group, AIDS Immunology and Pathogenesis Study Section.

Date: November 8–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Abraham P. Bautista, MSC, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.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: AIDS and Related Research Integrated Review Group, Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: November 8–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1775, *rubertm@csr.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: Center for Scientific Review Special Emphasis Panel, ZRG1 ICP–2 50R: PAR–03–118: Global Health Research Initiative Program for New Foreign Investigators.

Date: November 8, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, (301) 594–6830, *gerendad@csr.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: Center for Scientific Review Special Emphasis Panel, Cancer Diagnostic and Treatment.

Date: November 8–9, 2004.

Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.
Contact Person: Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–1720, *shauhung@csr.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: Center for Scientific Review Special Emphasis Panel, Radiotherapy and Radiation Biology SBIRs.
Date: November 8, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Bo Hong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, (301) 435–5879, *hongb@csr.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: Center for Scientific Review Special Emphasis Panel, Fellowships in Psychopathology, Developmental Disabilities, Stress and Aging.
Date: November 8–9, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *shirleym@csr.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: Center for Scientific Review Special Emphasis Panel, SBIB 13: Small Business Novel Technologies for In Vivo Imaging and Image-guided Cancer Interventions.
Date: November 8, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Tysons Corner Marriott Hotel, 8028 Leesburg Pike, Vienna, VA 22182.
Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1258, *petrosia@csr.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: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Muscle Biology and Exercise Physiology Study Section.
Date: November 8–9, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.
Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *bartletr@csr.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: AIDS and Related Research Integrated Review Group, HIV/AIDS Vaccines Study Section.
Date: November 8–9, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.
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: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience Fellowship.
Date: November 8–9, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.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: Center for Scientific Review Special Emphasis Panel, Pharmacology and Diagnostics for Neuropsychiatric Disorders/Brain Disorders and Clinical Neuroscience/SBIR.
Date: November 8–9, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.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: Center for Scientific Review Special Emphasis Panel, Study of Protein Allostery and Hemoglobin Special Emphasis Panel.
Date: November 8, 2004.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, *rakhitg@csr.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: Center for Scientific Review Special Emphasis Panel, Cognition Perception and Language Fellowships.
Date: November 8, 2004.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.
Contact Person: Lynn T Nielsen-Bohlman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089F, MSC 7848, Bethesda, MD 20892, (301) 594–5287, *nielsenl@csr.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: Center for Scientific Review Special Emphasis Panel, Special Topics.
Date: November 8, 2004.
Time: 9:30 a.m. 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044, *leszczyd@csr.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: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Monoamines and Drugs of Abuse (ZRG1 IFCN–C (04) M).
Date: November 8, 2004.
Time: 10:30 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Selmanoff, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, (301) 435–1119, *mselmanoff@csr.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: Center for Scientific Review Special Emphasis Panel, Pancreatic Cancer.

Date: November 8, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 6192, MSC 7804, Bethesda, MD 20892, (301) 451–0131, *forryscs@csr.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: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Alcohol Benzodiazepines.

Date: November 8, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: to review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.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: Center for Scientific Review Special Emphasis Panel, ZRG1 EMNR F 02: Pregnancy Panel.

Date: November 8, 2004.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044, *leszczyd@csr.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: Center for Scientific Review Special Emphasis Panel, R15 Grant Applications.

Date: November 8, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–3565, *svedam@csr.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: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB H 17B: Small Business: Multi-Spectral Single-Scan Digital Lung Imaging System.

Date: November 8, 2004.

Time: 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Tysons Corner Marriott Hotel, 8028 Lessburg Pike, Vienna, VA 22182.

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1258, *petrosia@csr.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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–23971 Filed 10–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4900–FA–24]

Announcement of Funding Awards for Fiscal Year 2004 Hispanic-Serving Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: This document identifies the entities selected for funding under the Fiscal Year 2004 Hispanic-Serving Institutions Assisting Communities program (HSIAC). The HSIAC program assists Hispanic-Serving Institutions of Higher Education expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant program (CDBG). This notice is published in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing- or speech-impaired, this number may be reached through TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone numbers, other than ''800'' TTY numbers, are not toll free).

SUPPLEMENTARY INFORMATION: The Hispanic-Serving Institutions Assisting Communities program was approved by Congress under Section 107 of the Community Development Block Grant appropriations for the Fiscal Year 2004, and is administered by the Assistant Secretary for Policy Development and Research, Office of University Partnerships. In addition to the HSIAC program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local housing and development problems in their communities.

The HSIAC program provides funds for a wide range of CDBG-eligible activities, including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog Federal Domestic Assistance number for this program is 14.514.

On May 14, 2004 (69 FR 27053), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $6.95 million in Fiscal Year 2004 for the HSIAC program. The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), HUD is publishing details concerning the

recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2004 Hispanic-Serving Institutions Assisting Communities Program Funding Competition, by Institution, Address and Grant Amount

Region VI

1. Regents of the University of New Mexico-Taos, Mr. Philip Chandler Barrett, Regents of the University of New Mexico-Taos, 115 Civic Plaza Drive, Taos, NM 85751. Grant: $600,0000.

2. The University of Texas El Paso, Dr. Paul Maxwell, The University of Texas El Paso, 500 West University, El Paso, TX 79968. Grant: $599,539.

3. Regents of New Mexico State University, Dr. Anna M. Chieffo, Regents of New Mexico State University, 1620 Standley Drive, Academic Research A, Room 110, Las Cruces, NM 88003. Grant: $600,000.

4. Houston Community College System, Mr. Andy Montez, Houston Community College System, 3100 Main, Suite 100, Houston, TX 77002. Grant: $597,149.

5. Northern New Mexico Community College, Ms. Bernadette Chavira-Merriman, Northern New Mexico Community College, 921 Paseo de Onate, Espanola, NM 87532. Grant: $600,000.

Region VIII

6. Adams State College, Ms. Mary Carmel Hoffman, Adams State College, 208 Edgemont Street, Room 115, Alamosa, CO 81102. Grant: $600,000.

7. Otero Junior College, Mr. Gary Ashida, Otero Junior College, 1802 Colorado Avenue, La Junta, CO 81050. Grant: $596,709.

Region IX

8. Allan Hancock College, Ms. Elaine Healy, Allan Hancock College, 800 South College Drive, Santa Maria, CA 93454. Grant: $600,000.

9. West Hills Community College for West Hills College Lemoore, Ms Patty Scroggins, West Hills Community College for West Hills College Lemoore, 9900 Cody Avenue, Coalinga, CA 93210. Grant: $365,303.

Region X

10. Rancho Community College District/Santa Ana College, Ms. Lori Brown, Rancho Community College District/Santa Ana College, 2323 North Broadway, Santa Ana, CA 92706. Grant: $600,000.

11. Imperial Valley College, Mr. Gonazalo Huerta, Imperial Valley College, 380 East Aten Road, Imperial CA 92251. Grant: $600,000.

12. Central Arizona College, Mr. Hugo Steincamp, Central Arizona College, 8470 North Overfield Road, Coolidge, AZ 85228. Grant: $600,000.

Dated: October 15, 2004.

Dennis C. Shea,

Assistant Secretary for Policy Development and Research.

[FR Doc. 04–24000 Filed 10–26–04; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4743–N–06]

Notice of Planned Closing of Portland, OR; Omaha, NE; Albuquerque, NM; and Birmingham, AL; Post-of-Duty Stations

AGENCY: Office of Inspector General, (HUD).

ACTION: Notice of planned closing of the Portland, Oregon; Omaha, Nebraska; Albuquerque, New Mexico; and Birmingham, Alabama post-of-duty stations.

SUMMARY: This notice advises the public that the HUD Office of Inspector General (OIG) plans to close its Portland, Oregon; Omaha, Nebraska; Albuquerque, New Mexico; and Birmingham, Alabama post-of-duty stations, and also provides a cost-benefit analyses of the impact of these closures.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–4500, 202–708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: Between 1997 and 2000 HUD/OIG established one and two person post-of-duty stations in Portland, Oregon; Omaha, Nebraska; and Albuquerque, New Mexico to give direct support to the Operation Safe Home (OSH) initiative to combat violent and drug related crime in the public and assisted housing in the city and nearby communities. Nationwide experience since the initiation of OSH in 1994 had proven that the best results/impact could be obtained when an HUD/OIG Special Agent was physically located in the target city. However, in accordance with the requirements of the Fiscal Year 2002 HUD Appropriations Act (Pub. L. 107–73, approved November 26, 2001), HUD/OIG terminated OSH and began re-deploying staff to focus on investigations involving single-family fraud and property flipping. This change eliminated the need to maintain separate post-of-duty stations in Portland, Oregon; Omaha, Nebraska; and Albuquerque, New Mexico, and gave HUD/OIG the opportunity to generate cost savings associated with discontinuing an additional office.

Regarding the Birmingham, Alabama post-of-duty station, it has existed since the early 1970s. During the 1990s, the office was staffed with a senior auditor and two staff auditors. The senior auditor and one staff auditor have left HUD/OIG, and the office is currently left with one staff auditor. Closing this office gives HUD/OIG the opportunity to generate cost savings associated with discontinuing an office, since the audits currently performed by the office can be performed as efficiently and effectively by staff in HUD/OIG's Atlanta Regional Office.

Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that a plan for field reorganization, which may involve the closing of any field or regional office, of the Department of Housing and Urban Development may not take effect until 90 days after a cost-benefit analysis of the effect of the plan on the office in question is published in the **Federal Register**. The required cost-benefit analysis should include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that ''[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations).'' (*See* House Conference Report No. 95–1792, October 14, 1978 at 58.) The duty-stations in Portland, Oregon; Omaha, Nebraska; Albuquerque, New Mexico;

and Birmingham, Alabama are single purpose duty stations, and are being closed based on workload rather than under a reorganization of HUD/OIG field offices. Although notice of the closing of a duty station is not subject to the requirement of section 7(p), as supported by legislative history, HUD/OIG nevertheless prepared a cost benefit analysis for its own use in determining whether to proceed with the closing. Through this notice, HUD/OIG advises the public of the closing of the Portland, Oregon; Omaha, Nebraska; Albuquerque, New Mexico; and Birmingham, Alabama duty stations and provides the cost benefit analysis of the impact of the closure.

Impact of the Closure of the Portland, Oregon; Omaha, Nebraska; Albuquerque, New Mexico; and Birmingham, Alabama; Post-of-Duty Stations: HUD/OIG considered the costs and benefits of closing the Portland, Oregon; Omaha, Nebraska; Albuquerque, New Mexico; and Birmingham, Alabama post-of-duty stations, and is publishing its cost-benefit analyses with this notice. In summary, HUD/OIG has determined that the closures will result in a cost savings, and, as a result of the size and limited function of the office, will cause no appreciable impact on the provision of authorized investigative services/activities in the area.

Cost-Benefit Analysis

A. Cost Savings: The Portland, Oregon post-of-duty station currently costs approximately $2866.82 per month for space rental. Additional associated overhead expenses (*e.g.*, telephone service) are incurred to operate the post-of-duty station. Thus, closing the office will result in annual savings of at least $34,401.00. In addition, by closing the office HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises.

The Omaha, Nebraska, post-of-duty station currently costs approximately $225 per month for space rental. Additional associated overhead expenses are incurred to operate the post-of-duty station. In addition, the agent is required to travel to the Regional Office in Kansas City, Missouri on a quarter-yearly basis for required agent qualification update training. Thus, closing the office will result in annual savings of at least $4,000. In addition, by closing the office HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises.

The Albuquerque, New Mexico post-of-duty station currently costs approximately $1288.08 per month for space rental. Additional associated overhead expenses are incurred to operate the post-of-duty station. Thus, closing the office will result in annual savings of at least $15,457.00. In addition, by closing the office HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises.

The Birmingham, Alabama, post-of-duty station currently costs approximately $4,034 per month for space rental. Additional associated overhead expenses are incurred to operate the post-of-duty station. Thus, closing the office will result in annual savings of at least $48,000.

B. Additional Costs: With respect to the Portland, Oregon and Albuquerque, New Mexico post-of-duty stations there will be no offsetting costs. HUD/OIG currently has no staff in either office. Relocation costs associated with personnel in the Omaha, Nebraska and Birmingham, Alabama post-of-duty stations are estimated to total no more than $90,000.

C. Impact on Local Economy: No appreciable impact on the local economy of Portland, Oregon; Omaha, Nebraska; Albuquerque, New Mexico; and Birmingham, Alabama is anticipated. The post-of-duty stations are co-located with office space leased by other federal agencies, and it is anticipated that the space can easily be re-leased to other tenants.

D. Effect on Availability, Accessibility and Quality of Services Provided to Recipients of Those Services: The establishment of the Portland, Oregon; Omaha, Nebraska; and Albuquerque, New Mexico post-of-duty stations were based entirely on the needs of the HUD/OIG to have Special Agents in closer proximity to OSH activities conducted in the Portland, Omaha and Albuquerque areas. These activities have been terminated. Further, as was the case prior to the establishment of these offices, special agents assigned to other HUD/OIG offices can cost-effectively address fraud investigations in the Portland, Omaha and Albuquerque areas.

Similarly, the establishment of the Birmingham, Alabama post-of-duty station was based on the needs of the HUD/OIG to have auditors in closer proximity to audit activities conducted in the Birmingham area. However, HUD/OIG currently believes that auditors assigned to the Atlanta Regional Office can cost-effectively address the limited number of audits in the Birmingham area.

For the reasons stated in this notice, HUD/OIG intends to proceed to close its Portland, Oregon; Albuquerque, New Mexico; Omaha, Nebraska; and Birmingham, Alabama post-of-duty stations at the expiration of the 90-day period from the date of publication of this notice.

Dated: October 20, 2004.

Kenneth M. Donohue, Sr.,

Inspector General.

[FR Doc. 04–23999 Filed 10–26–04; 8:45 am]

BILLING CODE 4210–78–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Renewal of the Public Advisory Committee Charter

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with 41 CFR Part 102–3, Subpart B, How Are Advisory Committees Established, Renewed, Reestablished, and Terminated. Following the recommendation and approval of the Exxon Valdez Oil Spill Trustee Council, the Secretary of the Interior hereby renews the Exxon Valdez Oil Spill Public Advisory Committee Charter to continue for approximately 2 years, to September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Room 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: On March 24, 1989, the T/V Exxon Valdez ran aground on Bligh Reef in Prince William Sound in Alaska spilling approximately 11 million gallons of North Slope crude oil. Oil moved into the Gulf of Alaska, along the Kenai coast to Kodiak Island and the Alaska Peninsula—some 600 miles from Bligh Reef. Massive clean-up and containment efforts were initiated and continued to 1992. On October 8, 1991, an agreement was approved by the United States District Court for the District of Alaska that settled claims of the United States and the State of Alaska against the Exxon Corporation and the Exxon Shipping Company for various criminal and civil violations. Under the civil settlement, Exxon agreed to pay to the governments $900

million over a period of 10 years. An additional 5-year period was established to possibly make additional claims.

The Exxon Valdez Oil Spill Trustee Council was established to manage the funds obtained from the civil settlement of the Exxon Valdez Oil Spill. The Trustee Council is composed of three State of Alaska trustees (Attorney General; Commissioner, Department of Environmental Conservation; and Commissioner, Department of Fish and Game) and three Federal representatives appointed by the Federal Trustees (Secretary, U.S. Department of Agriculture; the Administrator of the National Oceanic and Atmospheric Administration; and the Secretary, U.S. Department of the Interior).

The Public Advisory Committee was created pursuant to Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The Public Advisory Committee was originally chartered as the Public Advisory Group by the Secretary of the Interior on October 23, 1992, and functions solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

The Public Advisory Committee was established to advise the Trustee Council, and began functioning in October 1992. The Public Advisory Committee consists of 20 members representing the following principal interests: sport hunting and fishing, conservation and environmental, public-at-large, recreation users, commercial tourism, local government, science/technical, subsistence, commercial fishing, aquaculture and mariculture, marine transportation, regional monitoring programs, tribal government, and Native landowners. Members are appointed to serve a 2-year term.

To carry out its advisory role, the Public Advisory Committee makes recommendations to, and advises, the Trustee Council in Alaska on the following matters:

All decisions related to injury assessment, restoration activities, or other use of natural resource damage recovery monies obtained by the governments, including all decisions regarding:

a. Planning, evaluation and allocation of available funds;

b. Planning, evaluation and conduct of injury assessment and restoration activities;

c. Planning, evaluation and conduct of long-term monitoring and research activities; and

d. Coordination of a, b, and c.

Trustee Council intentions regarding the importance of obtaining a diversity of viewpoints is stated in the *Public Advisory Committee Background and Guidelines:* ''The Trustee Council intends that the Public Advisory Committee be established as an important component of the Council's public involvement process.'' The Council continues, stating their desire that ''* * * a wide spectrum of views and interest are available for the Council to consider as it evaluates, develops, and implements restoration activities. It is the Council's intent that the diversity of interests and views held by the Public Advisory Committee members contribute to wide ranging discussions that will be of benefit to the Trustee Council.''

In order to ensure that a broad range of public viewpoints continues to be available to the Trustee Council, and in keeping with the settlement agreement, the continuation of the Public Advisory Committee for another two-year period is recommended.

Certification

I hereby certify that the renewal of the Charter of the Public Advisory Committee, an advisory committee to make recommendations to and advise the Exxon Valdez Oil Spill Trustee Council mandated by the settlement of *United States of America* v. *State of Alaska,* No. A91–081 CV, and is in accordance with the comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and supplemented.

Dated: October 12, 2004.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 04–23990 Filed 10–26–04; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0066; Marine Mammal Marking, Tagging, and Reporting Certificates, 50 CFR 18.23(f)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice, request for comments.

SUMMARY: We, the Fish and Wildlife Service, have submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. To obtain copies of specific information collection requirements, related forms, and explanatory materials, contact our Information Collection Clearance Officer at the address or phone number listed below.

DATES: You must submit comments on or before November 26, 2004.

ADDRESSES: Send your comments and suggestions on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA–DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, related forms, or explanatory information, contact Hope Grey by phone at (703) 358–2482 or by e-mail at *hope_grey@fws.gov.*

SUPPLEMENTARY INFORMATION: We have submitted a request to OMB to renew approval of information collection requirements for forms R7–50, R7–51, and R7–52 (Marine Mammal Marking, Tagging, and Reporting Certificates). Currently, we have approval from OMB to collect information under OMB control number 1018–0066. This approval expires on October 31, 2004. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless we display a currently valid OMB control number. OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). Following our submittal, OMB has up to 60 days to approve or disapprove our information collection request; however, their response may be given as early as 30 days after our submittal. Therefore, to ensure your comments receive consideration, send your comments and suggestions to OMB by the date listed in the DATES section near the beginning of this notice.

On April 30, 2004, we published in the **Federal Register** (69 FR 23802) a 60-

day notice of our intent to request renewal of information collection authority from OMB. In that notice, we solicited public comments for 60 days ending on June 29, 2004. We received two comments, both from the same individual, regarding this **Federal Register** notice. The comments expressed opposition to the collection of the information as described in the notice. Comments were based on the premise that the terminology is misleading and that the information provided to the Service is inaccurate. We note the concerns raised by this individual; however, we believe this collection of the information provides an important means to measure the legal subsistence harvest of polar bear, sea otter, and walrus and to improve the quality and quantity of harvest and biological data used in management decisions. In addition, we believe the information provided by the participants is accurate.

In October 1988, pursuant to provisions of section 109(i) of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361–1407), we implemented formal marking, tagging, and reporting regulations at 50 CFR 18.23(f) for Alaska Natives harvesting polar bear, northern sea otter, and Pacific walrus in Alaska. Under section 101(b) of the MMPA, Alaska Natives residing in Alaska and dwelling on the coast of the North Pacific or Arctic Ocean may harvest these species for subsistence or handicraft purposes. Section 109(i) of the MMPA authorized us, acting on behalf of the Secretary of the Interior, to prescribe marking, tagging, and reporting regulations applicable to this Native subsistence and handicraft take.

Our regulations have enabled us to gather data on the Native subsistence and handicraft harvest and on the biology of polar bear, sea otter, and Pacific walrus in Alaska necessary to determine what effect such take is having on these populations. The regulations have also provided us with a means of monitoring the disposition of the harvest to ensure that any commercial use of products created from these species meets the criteria set forth in section 101(b) of the MMPA.

The information that we propose to continue to collect from Alaska Natives will be used to improve our decisionmaking ability by substantially expanding the quality and quantity of harvest and biological data upon which we can base future management decisions. It will provide us with the ability to make inferences about the condition and general health of these populations. Without authority to collect this harvest information, our ability to measure the take of polar bear, sea otter, and walrus is inadequate. We believe that mandatory marking, tagging, and reporting is essential for us, in concert with Alaska Natives, to be able to improve the quality and quantity of harvest and biological data necessary to base future management decisions. It allows us to make rational, knowledgeable decisions regarding the Native harvest.

We estimate that the annual burden associated with this request will be 639 hours for each year of the 3-year period of OMB authorization. We calculated this estimated burden based on previous experience suggesting that Alaska Natives annually take about 2,556 polar bears, sea otter, and Pacific walrus for subsistence and handicraft purposes, and that 15 minutes will be needed to provide the required information for each animal taken.

Title: Marine Mammal Marking, Tagging, and Reporting Certificates, 50 CFR 18.23(f).

OMB Control Number: 1018–0066.

Form numbers: R7–50, R7–51, and R7–52.

Frequency of collection: Occasional.

Description of respondents: Individuals and households.

Total annual responses: 2,556.

Total annual burden hours: 639 hours.

As with our 60-day notice, this notice invites your comments on: (1) Whether or not this collection of information is necessary for us to properly perform our functions, including whether or not this information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions we use; (3) ways to enhance the quality, utility, and clarity of the information we are proposing to collect; and (4) ways for us to minimize the burden of the collection of information on people who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 5, 2004.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 04–23988 Filed 10–26–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to 5 p.m. on Tuesday, November 16, 2004 and 8:30 a.m. to 12 p.m. on Wednesday, November 17, 2004. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Aquatic Nuisance Species Task Force meeting will be held at the Marriott Crystal Gateway, 1700 Jefferson Davis Highway, Arlington, VA 22202. Phone (703) 920–3230. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Everett Wilson, Acting Executive Secretary, Aquatic Nuisance Species Task Force, at (703) 358–2148.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting include: a discussion of the implementation of the ANSTF Strategic Plan; ANSTF Committee and Regional Panel reports; a presentation on the draft National Management Plan for the genus Caulerpa; and a presentation of a new public awareness campaign.

Dated: October 15, 2004.

Mamie A. Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 04–23989 Filed 10–26–04; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the North Fork Rancheria's Proposed Trust Acquisition and Hotel/Casino Project, Madera County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the proposed 305± acre trust acquisition and casino development project to be located within unincorporated Madera County, California. The purpose of the proposed action is to help provide for the economic development of the North Fork Rancheria of Mono Indians (Tribe). This notice also announces a public scoping meeting to identify potential issues and content for inclusion in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by November 26, 2004. The public scoping meeting will be held November 15, 2004, from 6 p.m. to 9 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Clay Gregory, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. The public scoping meeting will be at the Hatfield Hall, Madera District Fairgrounds, 1850 West Cleveland Avenue, Madera, California.

FOR FURTHER INFORMATION CONTACT: William Allan, (916) 978–6043.

SUPPLEMENTARY INFORMATION: The Tribe proposes that 305± acres of land be taken into trust and that a casino, parking, hotel, and other facilities supporting the casino be constructed on the trust acquisition property. The 305± acres, which are made up of 7 parcels of land, are located within unincorporated Madera County, California, just north of the City of Madera and adjacent to State Route 99 (SR–99). The site is bounded on the north by Avenue 18, rural residential land, light industrial land, and vacant land; on the east by Golden State Boulevard and SR–99; on the south by agricultural land and residential land; and on the west by Road 23 and agricultural land.

The proposed action is to develop an approximately 472,000 square foot hotel and casino resort and associated facilities, which would include a main gaming hall, food and beverage services, retail space, banquet/meeting space, administration space, and a hotel. Food and beverage facilities would include three full service restaurants, a five-tenant food court, a buffet, four bars and a lounge. The hotel would include 200 rooms, a resort-style pool area and a spa. Approximately 4,500 parking spaces would be provided. Regional access to the project site is via SR–99. Road 23, Avenue 18, and Golden State Boulevard would provide direct access to the hotel/casino resort.

Areas of environmental concern to be addressed in the EIS include land use, geology and soils, water resources, agricultural resources, biological resources, cultural resources, mineral resources, paleontological resources, traffic and transportation, noise, air quality, public health/environmental hazards, public services and utilities, hazardous waste and materials, socio-economics, environmental justice, and visual resources/aesthetics. The range of issues addressed may be expanded based on comments received during the scoping process.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.l.

Dated: September 29, 2004.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–23998 Filed 10–26–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Respirator Program Records

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data is 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.

DATES: Submit comments on or before December 27, 2004.

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to *stoehr.melissa@dol.gov.* Ms. Stoehr can be reached at (202) 693–9837 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(a)(7) of the Mine Act mandates in part that mandatory standards prescribe the use of protective equipment where appropriate to protect miners against hazards. Where protective equipment or respirators are required because of exposure to harmful substances, MSHA must ensure that such equipment offers adequate protection for workers. A written respirator program that addresses such

issues as selection, fitting, use, and maintenance of respirators is essential for ensuring that workers are properly and effectively using the equipment. Records of fit-testing are essential for determining that the worker is wearing the proper respirator.

Title 30 CFR sections 56.5005 and 57.5005 require metal and nonmetal mine operators to institute a respirator program governing selection, maintenance, training, fitting, supervision, cleaning and use of respirators. To control those occupational diseases caused by breathing air contaminated with harmful dusts, fumes, mists, gases, or vapors, the primary objective is to prevent atmospheric contamination. MSHA's current policy, as prescribed by regulation, is to require that this be accomplished by feasible engineering measures. When effective controls are not feasible, or while they are being instituted, or during occasional entry into hazardous atmospheres to perform maintenance or investigations, appropriate respirators are to be used in accordance with established procedures protecting the miners.

Sections 56.5005 and 57.5005 incorporate by reference requirements of the American National Standards Institute (ANSI Z88.2–1969). These incorporated requirements mandate that miners who must wear respirators be fit-tested to the respirators that they will use. Certain records are also required to be kept in connection with respirators, including records of the date of issuance of the respirator, and fit-test results. The fit-testing records are essential for determining that the worker is wearing the proper respirator.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the respirator program records. MSHA 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

The mine operator uses the information to properly issue respiratory protection to miners when feasible engineering and/or administrative controls do not reduce the exposure to permissible levels. Fit-testing records are used to ensure that a respirator worn by an individual is in fact the one for which that individual received a tight fit. MSHA uses the information to determine compliance with the standard.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Respirator Program Records.

OMB Number: 1219–0048.

Recordkeeping: None.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc.: 30 CFR 56.5005 and 57.5005.

Total Respondents: 310.

Frequency: Monthly.

Total Responses: 5,220.

Average Time Per Response: .428 hour.

Estimated Total Burden Hours: 2,235 hours.

Burden Cost (Capital/Startup): None.

Burden Cost (Operating/Maintaining): $156,350.

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 will also become a matter of public record.

Dated at Arlington, Virginia, this 19th day of October, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–24045 Filed 10–26–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Refuse Piles and Impounding Structures, Recordkeeping and Reporting Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or containing 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.

DATES: Submit comments on or before December 27, 2004.

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to *stoehr.melissa@dol.gov*. Ms. Stoehr can be reached at (202) 693–9837 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

The Coal Mine Health and Safety Act of 1969 was amended by the Federal Mine Safety and Health Act of 1977 after the Buffalo Creek dam failure in 1972 in West Virginia. The refuse pile and impound standards, Title 30 CFR sections 77.215 and 77.216 had been enacted earlier in 1975 and were incorporated into the Act. Additional parts of these Sections were promulgated and enacted in 1992. The standards require that the agency approve prudently engineered design plans for dams and their impoundments, as well as the plans for hazardous refuse piles that are routinely constructed by coal mine operators. Plan revisions are also required to be submitted for approval. In addition, the

standards also require plans when one of these sites is to be abandoned. And plans are required when spontaneous fires erupt and need to be extinguished at the burning site. Records of weekly inspections and instrument monitoring are also required to ensure that the sites remain safe. Finally, the mine operators are also required to submit an annual status report and certification that guarantees that the site is being constructed in accordance with the approved plan, and the site has not been altered during the construction year.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the Refuse Piles and Impoundment Structures, Recordkeeping and Reporting Requirements. MSHA is particularly interested in comments that:

* Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;

* Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

* Address 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) to minimize the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

There are approximately 740 coal mine impounding structures and 30 hazardous refuse piles, for a total of 770 sites. All impoundments and hazardous refuse piles are required by the standards to be constructed and operated in an approved manner. In addition, coal mine operators frequently revise construction plans to accommodate mining conditions, cycles or markets. Since these revisions to the structures can adversely affect a great number of people, such changes are required to be planned in a prudent manner and approved by the agency. Fire extinguishing plans are only required from an operator when a spontaneous combustion has occurred, and the operator is directed to extinguish the fire. Inspections on a weekly basis, or inspections at a longer interval for long established and stable impoundments (after the regulation changes in 1992), are required to ensure that precipitation, seismic activity, or perhaps an unknown construction flaw, has not adversely affected any part of the dam site. The annual status report and certification ensures that the company's engineers confirm that the site is in accordance with the approved engineering plan. An abandonment plan approved by the agency ensures that a hazardous site is not left in place after all mining activity has ceased.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Impounding Safety and Refuse Piles, Reporting Requirements, Certifications and Recordkeeping.

OMB Number: 1219–0015.

Recordkeeping: 3 years.

Frequency: Annually and 17 times a year.

Affected Public: Business or other for profit.

Cite/Reference/Form/etc.: 30 CFR Sections 77.215 and 77.216.

Total Respondents: 770.

Total Responses: 12,885.

Average Time Per Response: 8 hours.

Estimated Total Burden Hours: 96,432.

Total Annualized Capital/Startup Costs: $0.

Total Operating and Maintenance Costs: $0.

Total Burden Cost (Capital/Startup): None.

Total Burden Cost (Operating/Maintaining): None.

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 will also become a matter of public record.

Dated at Arlington, Virginia, this 19th day of October, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–24046 Filed 10–26–04; 8:45 am]

BILLING CODE 4510–43–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 04–11]

Notice of November 8, 2004 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 2–4 p.m., Monday, November 8, 2004.

PLACE: Department of State, C Street Entrance, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Joyce B. Lanham at (202) 521–3861.

STATUS: Meeting will be open to the public from 2 p.m. until conclusion of the administrative session; a closed session will commence immediately following the conclusion of the open session, at approximately 2:20 p.m.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a quarterly meeting of the Board to consider the selection of countries that will be eligible for Millennium Challenge Account (''MCA'') assistance in FY2005 under Section 607 of the Millennium Challenge Act of 2003, codified at 22 U.S.C. 7706, and certain administrative matters. The majority of the meeting will be devoted to a discussion of MCA candidate countries, which is expected to involve the consideration of classified information and will be closed to the public. The Board may also consider certain matters related solely to the internal practices of MCC during the closed session. A brief open session that will include a CEO update for the Board on MCC operations will precede the closed session.

Due to security requirements at the meeting location, all individuals wishing to attend the open portion of the meeting are encouraged to arrive at least 20 minutes before the meeting begins and comply with all relevant security requirements of the Department of State. Those planning to attend must notify Joyce Lanham at (202) 521–3861 or via email at *lanhamjb@mcc.gov* by noon on Wednesday, November 3, 2004, with the following information: full name, telephone number, e-mail address, affiliation/company name, social security number and date of birth. Please bring a photo ID with you on the day of the meeting. Seating for the brief open session will be available on a first come, first served basis.

Dated: October 25, 2004.

Jon A. Dyck,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 04–24152 Filed 10–25–04; 2:43 pm]

BILLING CODE 9210–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 13, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means: Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001. E-mail: *records.mgt@nara.gov*. FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1-AU–04–02, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with a registry containing personal demographic data on individuals participating in medical research. This schedule, which applies to records in all media, also increases to 75 years the retention period for the registry, which was previously approved for disposal.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–04–4, 18 items, 18 temporary items). Records of the National Ocean Service, including such files as software created in-house (with accompanying manuals), application software, data and technical documentation for electronic models and expert systems, and data, system documentation, inputs, and outputs for tracking systems associated with operating plans, controlled correspondence, and memorandums of agreement.

3. Department of Health and Human Services, Food and Drug Administration (N1–88–03–5, 84 items, 83 temporary items). Records of the Center for Biologics Evaluation and Research relating to research, compliance, manufacturing, testing, approval, and inspection activities associated with regulating biological products. Included are such records as product license applications, production establishment license applications, applications to test prototype products on humans, inspection and investigation reports, adverse experience reports, new drug applications, general correspondence, advisory committee administrative files, export request files, and market withdrawal files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of product efficacy review final reports. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Justice, Drug Enforcement Administration (N1–170–04–10, 3 items, 3 temporary items). Sound and video recordings accumulated in the course of investigations and intelligence operations.

5. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (N1–436–04–3, 6 items, 6 temporary items). Master files, inputs, outputs, and documentation associated with an electronic system used to track the training activities of all agency personnel. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–16, 5 items, 4 temporary items). Extra copies of all controlled and major correspondence signed by the agency's Director or other senior officials. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies and indexes of controlled and major correspondence signed by the agency's Director, Deputy Director, Associate Directors, and Attorney Advisor. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–17, 4 items, 3 temporary items). Working files used to prepare reports to Congress and the President regarding agency objectives and accomplishments. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of final reports are proposed for permanent retention. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–18, 3 items, 3 temporary items). Records relating to the participation or sponsorship of agency staff in professional associations, societies, and related groups. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

9. Department of Transportation, Bureau of Transportation Statistics (N1–398–04–38, 3 items, 3 temporary items). Information collection budget reports submitted to the Office of Management and Budget. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

10. Department of the Treasury, Office of the Secretary (N1–56–04–3, 12 items, 6 temporary items). Administrative records, working papers, Web site content, and Web site management records accumulated by the Internal Revenue Service Oversight Board relating to the Treasury Department's oversight of IRS administration and operations. Proposed for permanent retention are recordkeeping copies of official correspondence, speeches and testimony, publications and reports, meeting minutes, and news releases. Also included are electronic copies of records created using electronic mail and word processing.

11. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–18, 21 items 18 temporary items). Record relating to postage stamp and special products printing and processing, including records created in connection with such activities as ordering, scheduling, production, tracking, receiving/shipping, corrective actions, service returns, discrepancy reporting, and planning. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of postage stamps annual orders, postage stamp history files, and special security products files.

12. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–19, 9 items, 9 temporary items). Records relating to engraving and plate production, including such files as production control records, inventories, production statistics, tracking logs, and identification number assignment records. Also included are electronic copies of records created using electronic mail and word processing.

13. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–20, 10 items 8 temporary items). Records relating to the printing, processing, and production of currency. Included are such records as yearly currency orders, printing orders, manuals, reports, manufacturing support materials, and currency scheduling files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of official Federal Reserve Board records of currency schedules, requests and correspondence, and year-end currency reports.

Dated: October 20, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–24021 Filed 10–26–04; 8:45 am]

BILLING CODE 7515–01–P

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 (Public Law 92–463), as amended, notice is hereby given that six meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Visual Arts (Access to Artistic Excellence): November 3–5, 2004, Room 716. This meeting, from 9 a.m. to 5:30 p.m. on November 3rd and 4th, and from 9 a.m. to 2:30 p.m. on November 5th, will be closed.

Local Arts Agencies (Access to Artistic Excellence): November 4–5, 2004, Room 730. A portion of this meeting, from 12:30 p.m. to 1:30 p.m. on November 5th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 5 p.m. on November 4th, and from 9 a.m. to 12:30 p.m. on November 5th, will be closed.

Music (Access to Artistic Excellence, Panel A): November 15–17, 2004, Room 714. A portion of this meeting, from 4:30 p.m. to 5:30 p.m. on November 17th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 6 p.m. on November 15th, from 9 a.m. to 6:30 p.m. on November 16th, and from 9 a.m. to 4:30 p.m. and 5:30 p.m. to 6 p.m. on November 17th, will be closed.

Music (Access to Artistic Excellence, Panel B): November 18–19, 2004, Room 714. A portion of this meeting, from 4:45 p.m. to 5:30 p.m. on November 19th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 6 p.m. on November 18th, and from 9 a.m. to 4:45 p.m. and 5:30 p.m. to 6 p.m. on November 19th, will be closed.

Folk and Traditional Arts (Access to Artistic Excellence): November 8–10, 2004, Room 716. This meeting, from 9 a.m. to 6:30 p.m. each day, will be closed.

Dance (Access to Artistic Excellence): December 7–9, 2004, Room 730. This meeting, from 9 a.m. to 5:30 p.m. on December 7th, from 9 a.m. to 6 p.m. on December 8th, and from 9:30 a.m. to 3:30 p.m. on December 9th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for

financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 14, 2004, these sessions will be closed to the public pursuant to subsection (c)\(6) of 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 22, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–24020 Filed 10–26–04; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by December 27, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the inforamtion on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Proposal Review Process.

OMB Control No.: 3145–0060.

Expiration Date of Approval: March 31, 2005.

Proposed Project Proposal Evaluation Process

The National Science Foundation (NSF) is an independent Federal agency created by the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–75). The Act states the purpose of the NSF is ''to promote the progress of science; [and] to advance the national health, prosperity, and welfare'' by supporting research and education in all fields of science and engineering.

From those first days, NSF has had a unique place in the Federal Government: It is responsible for the overall health of science and engineering across all disciplines. In contrast, other Federal agencies support research focused on specific missions such as health or defense. The Foundation also is committed to ensuring the nation's supply of scientists, engineers, and science and engineering educators.

The Foundation fulfills this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. It does this through grants and cooperative agreements to more than 2,000 colleges, universities, K–12 school systems, businesses, informal science organizations and other research institutions throughout the U.S. The Foundation accounts for about one-fourth of Federal support to academic institutions for basic research.

The Foundation relies heavily on the advice and assistance of external advisory committees, ad-hoc proposal reviewers, and to other experts to ensure that the Foundation is able to reach fair and knowledgeable judgments. These scientists and educators come from colleges and universities, nonprofit research and education organizations, industry, and other Government agencies.

In making its decisions on proposals the counsel of these merit reviewers has proven invaluable to the Foundation both in the identification of meritorious projects and in providing sound basis for project restructuring.

Review of proposals may involve large panel sessions, small groups, or use of a mail-review system. Proposals are reviewed carefully by scientists or engineers who are expert in the particular field represented by the proposal. About 50% are reviewed exclusively by panels of reviewers who gather, usually in Arlington, VA, to discuss their advice as well as to deliver it. About 35% are reviewed first by mail reviewers expert in the particular field, then by panels, usually of persons with more diverse expertise, who help the NSF decide among proposals from multiple fields or subfields. Finally, about 15% are reviewed exclusively by mail.

Use of the Information

The information collected is used to support grant programs of the Foundation. The information collected on the proposal evaluation forms is used by the Foundation to determine the following criteria when awarding or declining proposals submitted to the Agency: (1) What is the intellectual merit of the proposed activity? (2) What are the broader impacts of the proposed activity?

The information collected on reviewer background questionnaire (NSF 428A) is

used by managers to maintain an automated database of reviewers for the many disciplines represented by the proposals submitted to the Foundation. Information collected on gender, race, and ethnicity is used in meeting NSF needs for data to permit response to Congressional and other queries into equity issues. These data also are used in the design, implementation, and monitoring of NSF efforts to increase the participation of various groups in science, engineering, and education.

Confidentiality

When a decision has been made (whether an award or a declination), verbatim copies of reviews, excluding the names of the reviewers, and summaries of review panel deliberations, if any, are provided to the PI. A proposer also may request and obtain any other releasable material in NSF's file on their proposal. Everything in the file except information that directly identifies either reviewers or other pending or declined proposals is usually releasable to the proposer.

While listings of panelists' names are released, the names of individual reviewers, associated with individual proposals, are not released to anyone.

Because the Foundation is committed to monitoring and identifying any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s), the Foundation also collects information regarding race, ethnicity, disability, and gender. This information also is protected by the Privacy Act.

Burden on the Public

The Foundation estimates that anywhere from one hour to twenty hours may be required to review a proposal. It is estimated that approximately five hours are required to review an average proposal. Each proposal receives an average of 6.3 reviews, with a minimum requirement of three reviews. The estimated burden for the Reviewer Background Information (NSF 428A) is estimated at 5 minutes per respondent with up to 10,000 potential new reviewers for a total of 83 hours. The aggregate estimated total is 600,083 for the reviewer process and the reviewer background information.

Dated: October 22, 2004.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–24050 Filed 10–26–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–11]

Sacramento Municipal Utility District, Rancho Seco Independent Spent Fuel Storage Installation; Notice of Docketing of Materials License SNM–2510; Application for an Exemption and for a Conforming Amendment

By letter dated July 19, 2004, Sacramento Municipal Utility District (SMUD or the licensee) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission) requesting an exemption from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) 72.44(d)(3) pursuant to 10 CFR 72.7 and also requesting a conforming amendment to the Rancho Seco Independent Spent Fuel Storage Installation (ISFSI) technical specifications pursuant to 10 CFR 72.56.

The licensee is requesting Commission approval to be relieved from submitting an annual report to the Commission specifying the quantity of principal radionuclides released to the environment in liquid and gaseous effluent during the previous 12 months of the Rancho Seco ISFSI operation. The licensee is currently storing spent fuel at the Rancho Seco ISFSI on the site of the Rancho Seco Nuclear Generating Station located in Sacramento County, California under license SNM–2510. If the exemption is granted, then as further requested by the licensee, upon approval of the Commission, the Rancho Seco ISFSI license, SNM–2510, would be amended to remove this requirement from the technical specifications.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–11 and will remain the same for this action.

In accordance with the requirement of 10 CFR 51.21, NRC will perform an environmental assessment of the potential environmental impacts of this exemption request. The exemption (in conjunction with the conforming license amendment) is subject to the Commission's approval.

If the Commission grants the requested exemption, the Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) regarding the proposed amendment or, if a determination is made that the proposed amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the proposed amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action (conforming amendment) should be rescinded or modified.

For further details with respect to this amendment, *see* the application dated July 19, 2004, which is publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 15th day of October 2004.

For the Nuclear Regulatory Commission.

Amy M. Snyder,

Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–24018 Filed 10–26–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–11]

Sacramento Municipal Utility District, Rancho Seco Independent Spent Fuel Storage Installation; Notice of Docketing of Materials License SNM–2510; Amendment Application

By letter dated July 29, 2004, Sacramento Municipal Utility District (SMUD or licensee) submitted an application to the U.S. Nuclear Regulatory Commission (NRC or the Commission), in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 72.56, requesting the amendment of the Rancho Seco Independent Spent Fuel Storage Installation (ISFSI) license. SMUD is requesting Commission approval to allow for the storage of Greater than Class C (GTCC) waste at the Rancho Seco ISFSI located on the site of the Rancho Seco Nuclear Generating Station located in Sacramento County, California.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–11 and will remain the same for this action. Upon approval of the

Commission, the Rancho Seco ISFSI license, SNM–2510, would be amended to allow this action.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) regarding the proposed amendment or, if a determination is made that the proposed amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the proposed amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this amendment, see the application dated July 29, 2004, which is publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of October 2004.

For the Nuclear Regulatory Commission.

Amy M. Snyder,

Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–24019 Filed 10–26–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company, et al. South Texas Project, Units 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw its September 22, 2003 (ML032691397), application for proposed amendment to Facility Operating License No. NPF–76 and Facility Operating License No. NPF–80 for the South Texas Project, Units 1 and 2, respectively. The facility is located in Matagorda County, Texas.

The proposed amendment would have revised the Technical Specifications (TSs) to change the TS 3.3.2 requirements for Loss of Power Instrumentation (Functional Unit 8).

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 12, 2003 (68 FR 64139). However, by letter dated September 30, 2004 (ML042800236), the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 22, 2003, and the licensee's letter dated September 30, 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 System (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 18th day of October 2004. For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–24016 Filed 10–26–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nuclear Power Plants That Employ Boiling-Water Reactor (BWR) Mark I and II Designs Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated August 10, 2004, the Nuclear Security Coalition (Coalition), consisting of 39 separate organizations, has requested that the Nuclear Regulatory Commission (NRC) take action to: (1) Issue a demand for information to the licensees for all Mark I and II BWRs and conduct a 6-month study of options for addressing structural vulnerabilities; (2) present the findings of the study at a national conference attended by all interested stakeholders, providing for transcribed comments and questions; (3) develop a comprehensive plan that accounts for stakeholder concerns and addresses structural vulnerabilities of all Mark I and II BWRs within a 12-month period; (4) issue orders to the licensees for all Mark I and II BWRs compelling incorporation of a comprehensive set of protective measures, including structural protections; and (5) make future operation of each Mark I and II BWR contingent on addressing its structural vulnerability with participation and oversight by a panel of local stakeholders.

As the basis for this request, the Coalition states that nuclear power plants are critical national infrastructures and are prime targets of attacks, that the NRC ''requires only a light defense of nuclear power plants,'' and that BWRs of the Mark I and II designs are particularly vulnerable.

The petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The petition has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by section 2.206, appropriate action will be taken on this petition within a reasonable time. Members of the Coalition met with the Petition Review Board (PRB) on September 23, 2004, to discuss the petition; the summary of the meeting, with the transcript attached, was published on October 13, 2004. The results of that discussion have been considered in the PRB's determination regarding the Coalition's request for action and in establishing the schedule for reviewing the petition. A copy of the petition, and the meeting summary dated October 13, 2004, are available for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (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 e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of October 2004.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 04–24014 Filed 10–26–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–06021]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Rohm and Haas Company's Facility in Bristol, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Marjorie McLaughlin, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5240, fax (610) 337–5269; or by e-mail: *MMM3@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to Rohm and Haas Company for Materials License No. 37–01665–01, to authorize release of its facility in Bristol, Pennsylvania for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this notice.

II. EA Summary

The purpose of the action is to authorize the release of the licensee's Bristol, Pennsylvania facility for unrestricted use. Rohm and Haas Company was authorized by NRC from December 4, 1958, to use radioactive materials for research and development purposes at the Bristol, Pennsylvania site. On July 22, 2004, Rohm and Haas Company requested that NRC release the facility for unrestricted use. Rohm and Haas Company has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20. Rohm and Haas Company will continue licensed activities at other locations, as authorized by the license.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Rohm and Haas. Based on its reviews, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to release the facility for unrestricted use. The NRC staff has evaluated Rohm and Haas Company's request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: The Environmental Assessment (ML042880387), Amendment request and Final Status Survey results (ML042080055 and ML042220108), Additional Survey Information (ML042470162), Gas chromatograph source leak test results (ML042470170, ML042540075, and ML042540081) and additional information concerning the storage locker (ML042470164). 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 (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may be viewed electronically at the NRC Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD, 20852. The PDR reproduction contractor will copy documents for a fee. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated in King of Prussia, Pennsylvania, this 20th day of October, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Materials Security and Industrial Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–24017 Filed 10–26–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Establishing and Maintaining a Safety Conscious Work Environment; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on October 14, 2004 (69 FR 61049), that requests public comment on a guidance document for licensees on establishing and maintaining a safety conscious work environment. This action is necessary to correct an erroneous Web site.

FOR FURTHER INFORMATION CONTACT: Lisamarie Jarriel, Agency Allegations Advisor, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–8529, email *LLJ@nrc.gov*.

SUPPLEMENTARY INFORMATION: On page 61049, in the second column, in the second complete paragraph, in the last sentence, the Web site is corrected to read, *''http://www.nrc.gov/what-we-do/regulatory/allegations/scwe-guide.html.''*

Dated at Rockville, Maryland, this 21st day of October 2004.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 04–24015 Filed 10–26–04; 8:45 am]

BILLING CODE 7590–01–P

U.S. POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIMES: Thursday, November 4, 2004; 10 a.m. and 3 p.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 4–10 a.m. (Closed); 3 p.m. (Open).

MATTERS TO BE CONSIDERED:

Thursday, November 4–10 a.m. (Closed)

1. Financial Update.

2. Proposed Filing with the Postal Rate Commission for Premium Forwarding Service.

3. Rate Case Planning.

4. Strategic Planning.

5. Personnel Matters and Compensation Issues.

Thursday, November 4—3 p.m. (Open)

1. Minutes of the Previous Meeting, September 13 and 14, 2004.

2. Remarks of the Postmaster General and CEO.

3. Quarterly Report on Service Performance.

4. Committee Reports.

Thursday, November 4—3 p.m. (Open) [continued]

5. Board of Governors Calendar Year 2005 Meeting Schedule.

6. Office of the Governors Fiscal Year 2005 Budget.

7. Capital Investment.

a. Intelligent Mail Data Acquisition System.

8. Tentative Agenda for the December 7, 2004, meeting in Washington, DC.

CONTACT PERSON FOR FURTHER INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20250–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 04–24080 Filed 10–22–04; 4:12 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50571; File No. SR–NASD–2004–146]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to Permanently Adopt Fees for TotalView Product

October 20, 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 September 30, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by Nasdaq. On October 12, 2004, Nasdaq filed an amendment to the proposal.[3] Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders it effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* October 8, 2004 letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). The original proposed rule change contained conflicting language about Nasdaq's intent to make permanent the existing TotalView pilot program. In Amendment No. 1, Nasdaq clarified that the purpose of the proposed rule change is to make permanent the fees associated with TotalView that previously had been implemented on a pilot basis. The Commission also notes that the original proposed rule change was filed with a blank page between pages 13 and 14. Nasdaq confirmed that this was an error, and that no text is missing from the original proposed rule change. Telephone conversation between Jeffrey S. Davis, Nasdaq, and Joseph P. Morra, Commission, September 30, 2004.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Nasdaq provided the Commission with written notice of its intent to file the proposed rule change on September 21, 2004. See September 21, 2004 letter from Jeffrey S. Davis, Nasdaq, to Katherine A. England, Commission. Nasdaq asked the Commission to waive the 30-day operative delay. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on October 12, 2004, the date that Nasdaq filed Amendment No. 1. *See* Section 19(b)(3)(A) of the Act, and Rule 19b–4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(1), 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to adopt permanently the TotalView data package and reduced fees assessed for those feeds. The proposed rule change will make permanent the pilot program that was in effect without making any substantive changes to the way the pilot has been operating. The text of the proposed rule change is available at NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In November 2002, the Commission approved a proposed rule change that established fees assessed for several products known as ''ViewSuite,'' which contain data from Nasdaq's integrated quotation and execution system.[7] To encourage the broadest possible display of the Nasdaq market center data contained in the ViewSuite products, Nasdaq then proposed an optional pilot program to offer an enterprise-wide license to distributors.[8] This pilot allowed each distributor to provide a ViewSuite product to large numbers of subscribers for a fixed rate based upon a multiple of the incremental cost of the ViewSuite product and the size of that distributor's reported subscriber base.

To support broad dissemination of the data and understanding by its customers, Nasdaq subsequently simplified and reduced the pricing for ViewSuite on a pilot basis.[9] For the one-year pilot, Nasdaq offered subscribers a

[7] Securities Exchange Act Release No. 46843 (November 18, 2002), 67 FR 70471 (November 22, 2002)(SR–NASD–2002–33).

[8] Securities Exchange Act Release No. 47477 (March 10, 2003), 68 FR 13747 (March 20, 2003)(SR–NASD–2003–27).

[9] Securities Exchange Act Release No. 48581 (October 1, 2003), 68 FR 57945 (October 7, 2003)(SR–NASD–2003–111).

single ViewSuite entitlement, described in Rule 7010(q)(5), offering professional, non-professional and distributor fees. Finally, Nasdaq later eliminated one data feed that had been contained in the ViewSuite entitlement, renamed another and expanded the data contained in the renamed feed to cover all price levels associated with an individual issue traded on Nasdaq.[10] As a result, the current pilot provides purchasers and distributors with all quotes and orders of individual participants displayed within the Nasdaq market center, as well as the aggregate size of such orders at all price levels within the execution functionality of the Nasdaq market center.

Nasdaq has determined that the structure and pricing of the ViewSuite entitlement as currently set forth in Rule 7010(q) offer many benefits to investors and market data vendors and should be continued. To accomplish that outcome in its rule manual, Nasdaq will delete subsections (1) through (4) of paragraph (q). Subsection (5) will be retained and renumbered as subsection (1) containing the current pricing for professional and non-professional subscribers, as well as pricing for distributors of aggregated and detailed information (currently at (q)(1)(C) and (q)(2)(A)) and a 30-day free-trial period (currently at (q)(2)(C)). Subparagraphs (6) and (7) will be renumbered as subparagraphs (2) and (3) and extraneous definitions will be eliminated.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] in general, and with section 15A(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has asked that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act.[15] The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow for a seamless transition from pilot to permanent status for Nasdaq's TotalView product. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–146 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–NASD–2004–146. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–146 and should be submitted on or before November 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2867 Filed 10–26–04; 8:45 am]

BILLING CODE 8010–01–P

[10] Securities Exchange Act Release No. 49088 (January 16, 2004), 69 FR 3413 (January 23, 2004)(SR–NASD–2003–162).

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50575; File No. SR–NASD–2004–145]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Section 4 of Schedule A to the NASD By-Laws (Fees for Qualification Examinations)

October 20, 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 September 30, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by NASD. NASD has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the rule effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend Section 4 of Schedule A to the NASD By-Laws, to establish examination fees that shall be assessed upon persons taking various qualification examinations as of January 1, 2005. The proposed rule change also lists the examination fees that NASD will publish in Schedule A regardless of whether the current examination fee will increase. Below is the text of the proposed rule change. Proposed new language is in *italics.* Deletions are in [brackets].

SCHEDULE A TO NASD BY-LAWS

* * * * *

Section 4—Fees

(a) and (b) No change

(c) [There shall be an examination fee of $60.00 assessed as to each individual who is required to take an examination for registration as a registered representative pursuant to the provisions of the Rule 1030 Series, except that the examination fee for general securities representatives shall be $110.00.] *The following fees shall be assessed to each individual who registers to take an examination as described below as of January 1, 2005.* [This] *These* fees [is] *are* in addition to the registration fee described in [Item] *paragraph* (b). [Persons for whom an examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph (l) of this Section.]

Series 4	*Registered Options Principal*	*$80*
Series 6	*Investment Company Products/Variable Contracts Representative*	*$70*
Series 7	*General Securities Representative*	*$225*
Series 9	*General Securities Sales Supervisor—Options Module*	*$60*
Series 10	*General Securities Sales Supervisor—General Module*	*$95*
Series 11	*Assistant Representative—Order Processing*	*$60*
Series 17	*Limited Registered Representative*	*$65*
Series 22	*Direct Participation Programs Representative*	*$70*
Series 23	*General Securities Principal Sales Supervisor Module*	*$75*
Series 24	*General Securities Principal*	*$85*
Series 26	*Investment Company Products/Variable Contracts Principal*	*$75*
Series 27	*Financial and Operations Principal*	*$85*
Series 28	*Introducing Broker/Dealer Financial and Operations Principal*	*$75*
Series 37	*Canada Module of S7 (Options Required)*	*$150*
Series 38	*Canada Module of S7 (No Options Required)*	*$150*
Series 39	*Direct Participation Programs Principal*	*$75*
Series 42	*Registered Options Representative*	*$60*
Series 55	*Limited Representative—Equity Trader*	*$80*
Series 62	*Corporate Securities Limited Representative*	*$70*
Series 72	*Government Securities Representative*	*$80*
Series 82	*Limited Representative—Private Securities Offering*	*$75*
Series 86	*Research Analyst—Analysis*	*$150*
Series 87	*Research Analyst—Regulatory*	*$105*

(1) Persons for whom any qualification examination is waived pursuant to Rule 1070 shall be assessed as an application fee the examination fee for each qualification examination so waived.

(2) There shall be a service charge equal to the examination fee assessed to each individual who, having made an appointment for a specific time and place for computer-based administration of an examination, fails to timely appear for such examination or timely cancel such appointment.

(3) There shall be a service charge fee of $15.00 in addition to those fees specified above for any examination taken in a foreign test center located outside the territorial limits of the United States.

[(d) There shall be a New York Stock Exchange examination development fee of $90.00 assessed as to each individual who takes a Series 7 examination for registration as a general securities representative. This fee is in addition to the registration and examination fees described in paragraphs (b) and (c) respectively.]

[(e) There shall be an examination fee of $105.00 assessed as to each individual who takes a Series 86 examination for registration as a research analyst pursuant to Rule 1050. There shall be an examination fee of $55.00 assessed as to each individual who takes a Series 87 examination for registration as a research analyst pursuant to Rule 1050. This fee is in addition to the registration fee described in paragraph (b). Persons for whom an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] On October 13, 2004, the NASD filed Amendment No. 1 to the proposal. *See* letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 13, 2004 (''Amendment No. 1''). Amendment No. 1 clarifies and makes minor edits to the purpose section and the proposed rule text.

examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph (l) of this Section.]

[(f) There shall be a New York Stock Exchange examination development fee of $45.00 assessed as to each individual who takes a Series 86 or Series 87 examination for registration as a research analyst pursuant to Rule 1050. This fee is in addition to the registration and examination fees described in paragraphs (b) and (e) respectively.]

[(g) There shall be an examination fee of $110.00 assessed as to each individual taking the General Securities-Sales Supervisor Examination. There shall be an examination fee of $75.00 assessed as to each individual who is required to take any other examination for principals pursuant to the provisions of the Rule 1020 Series. Persons for whom an examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph (l) of this Section.] [6]

[(h) There shall be a service charge fee of $15.00 in addition to those fees specified in (b), (c), (d), (e) and (f) above for any examination taken in a foreign test center located outside the territorial limits of the United States.] [7]

[(i) There shall be a service charge equal to the examination fee assessed as to each individual who, having made an appointment for a specific time and place for computer-based administration of an examination, fails to timely appear for such examination or timely cancel such appointment.] [8]

(j) and (k) are renumbered (d) and (e).[9]

[(l) Each individual who is granted a waiver(s) for any qualification examination specified in paragraphs (c), (e), or (g) of this section shall be assessed as an application fee the examination fee as set forth in paragraph (c), (e), (f), or (g) for each qualification examination so waived.] [10]

(m) through (o) are renumbered (f) through (h).[11]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD proposes to make certain changes in qualification examination fees. NASD also proposes to publish in Schedule A a list of all the qualification examinations that may be required and their corresponding fees, regardless of whether such fees are proposed to be changed or would remain the same under the proposed rule change.[12]

Any person associated with a member firm who is engaged in the securities business of the firm must register with NASD. As part of the registration process, securities professionals must pass a qualification examination to demonstrate competence in each area in which they intend to work. Some of these examinations are sponsored (*i.e.,* developed) by NASD, and others are sponsored by the North American Securities Administrators Association (''NASAA''), the New York Stock Exchange (''NYSE''), the Municipal Securities Rulemaking Board (''MSRB''), or other self-regulatory organizations (''SROs'').[13] NASD administers these qualification examinations via computer through the PROCTOR® system at test centers operated by vendors under contract with NASD. NASD charges an examination fee to candidates for NASD-sponsored examinations. For those examinations sponsored by an NASD client and administered/delivered by NASD, NASD charges a delivery fee that comprises either a part or all of the examination fee for these examinations.

NASD has not adjusted current examination fees for NASD-sponsored examinations or delivery fees for client-sponsored examinations since 1989. At present, these fees do not reflect the costs incurred by NASD for administering and delivering these examinations. These costs consist of operational, technology and delivery costs. Operational costs consist of salaries and overhead for NASD staff involved in test delivery technical support, customer support and service, and examination administration. Delivery costs vary based on the length of the examination because NASD pays its delivery vendors an hourly rate for seat time at test delivery centers.[14]

Technology costs are the costs associated with the PROCTOR® system, including system maintenance and enhancements. The PROCTOR® system provides the following capabilities: importation and storage of items within examination banks; statistical analyses against the examination bank; tracking candidates' enrollment windows, appointments and result records; use of the delivery driver at the test delivery centers; and exporting raw data on item performance. Technology costs also include the significant expense being incurred over the next two years for the PROCTOR® system redesign/rebuild. The current PROCTOR® system needs to be updated to incorporate more modern technology. The new system will be more reliable and will include many new features such as additional item (question) formats (short answer, matching, drag/drop), on-line exhibits, and advanced biometrics for greater security.

NASD represents that this proposed rule change would eliminate existing provisions relating to specific examinations. Specifically, the proposed rule change would list in Schedule A all qualification examinations that may be required by NASD for its members, regardless of sponsor(s), and the corresponding fee that will be charged for each examination (whether the fee is proposed to be changed or remains the same). These fees represent the fees to be charged persons who register for one of these examinations beginning on January 1, 2005.[15] NASD plans to conduct an annual review of its costs and adjust examination and delivery fees, if necessary, as of January 1 each year after making the appropriate rule filings.

[6] *See* Amendment No. 1, *supra* note 5.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] NASD states that Section 4 of Schedule A currently identifies NYSE examination development fees of $90.00 for the Series 7 examination and $45.00 per examination for the Series 86 and 87 examinations. Under the proposed rule change, these development fees will continue to be part of the total examination fee charged to candidates, but they will no longer be separately identified in Schedule A. *See* Amendment No. 1, *supra* note 5.

[13] For example, NASD administers and delivers the Series 6, 24, and 27 examinations, which are sponsored by NASD. NASD also administers and delivers client examinations, such as the Series 7, which is sponsored by NYSE, and the Series 9 and 10, which are sponsored jointly by several SROs (AMEX, CBOE, MSRB, NASD, NYSE, PCX, and PHLX).

[14] NASD provides a network of more than 400 test centers located throughout the United States and overseas operated by two commercial vendors.

[15] The published fee represents the fee that will be charged at the time the individual registers for the examination. The individual then has 120 days to take the examination.

Fee Changes

NASD recently conducted an analysis of the costs of developing, administering, and delivering qualification examinations. The analysis showed that NASD's costs are rising, particularly, with respect to technology and delivery costs. Thus, NASD proposes to raise examination fees for certain NASD-sponsored examinations. In addition, NASD has advised its client examination sponsors of the impact of the higher costs on delivery fees for client-sponsored examinations. Accordingly, NASD is proposing to raise the examination fees for the following examinations.

Series 4	Registered Options Principal (Sponsored jointly by AMEX, CBOE, NASD, NYSE, PCX, and PHLX).	From $75 to $80.
Series 6	Investment Company Products/Variable Contracts Representative (NASD-sponsored)	From $60 to $70.
Series 7	General Securities Representative (NYSE-sponsored)	From $200 to $225.
Series 9	General Securities Sales Supervisor—Options Module (Sponsored jointly by AMEX, CBOE, MSRB, NASD, NYSE, PCX, and PHLX).	From $50 to $60.
Series 10	General Securities Sales Supervisor—General Module (Sponsored jointly by AMEX, CBOE, MSRB, NASD, NYSE, PCX, and PHLX) [16].	From $60 to $95.
Series 22	Direct Participation Programs Representative (NASD-sponsored)	From $60 to $70.
Series 24	General Securities Principal (NASD-sponsored)	From $75 to $85.
Series 27	Financial and Operations Principal (NASD-sponsored)	From $75 to $85.
Series 55	Limited Representative—Equity Trader (NASD-sponsored)	From $60 to $80.
Series 62	Corporate Securities Limited Representative (NASD-sponsored)	From $60 to $70.
Series 72	Government Securities Representative (NASD-sponsored)	From $60 to $80.
Series 87	Research Analyst—Regulatory (sponsored jointly by NASD and NYSE)	From $100 to $105.

Publication of Fee Schedule in Schedule A to NASD By-Laws

Notwithstanding whether the current examination fee will increase, NASD proposes to publish in Schedule A a schedule of all qualification examination fees that are delivered by NASD and that may be required by NASD for its members. NASD proposes to publish the following schedule:

Series 4	Registered Options Principal	$80
Series 6	Investment Company Products/Variable Contracts Representative	$70
Series 7	General Securities Representative	$225
Series 9	General Securities Sales Supervisor—Options Module	$60
Series 10	General Securities Sales Supervisor—General Module	$95
Series 11	Assistant Representative—Order Processing	$60
Series 17	Limited Registered Representative	$65
Series 22	Direct Participation Programs Representative	$70
Series 23	General Securities Principal Sales Supervisor Module	$75
Series 24	General Securities Principal	$85
Series 26	Investment Company Products/Variable Contracts Principal	$75
Series 27	Financial and Operations Principal	$85
Series 28	Introducing Broker/Dealer Financial and Operations Principal	$75
Series 37	Canada Module of S7 (Options Required)	$150
Series 38	Canada Module of S7 (No Options Required)	$150
Series 39	Direct Participation Programs Principal	$75
Series 42	Registered Options Representative	$60
Series 55	Limited Representative—Equity Trader	$80
Series 62	Corporate Securities Limited Representative	$70
Series 72	Government Securities Representative	$80
Series 82	Limited Representative—Private Securities Offering	$75
Series 86	Research Analyst—Analysis	$150
Series 87	Research Analyst—Regulatory	$105

NASD will announce the implementation of the proposed rule change in a *Notice to Members* to be published no later than 30 days from the date the proposed rule change is filed with the Commission. The new fees will become effective for ''120-day examination windows'' opened in the Central Registration Depository (CRD®) on or after January 1, 2005.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[17] in general and with Section 15A(b)(5) of the Act,[18] in particular which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the rule change is consistent with Section 15A(b)(5) of the Act [19] in that the fee changes reflect NASD's increased costs in delivering the examinations and in maintaining and upgrading the examination delivery system.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[16] *See* Amendment No. 1, *supra* note 5.

[17] 15 U.S.C. 78*o*–3.

[18] 15 U.S.C. 78*o*–3(b)(5).

[19] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing with the Commission, pursuant to Section 19(b)(3)(A)(ii) of the Act [20] and subparagraph (f)(2) of Rule 19b–4 thereunder,[21] because it establishes or changes a due, fee, or other charge imposed by NASD. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov. Please include File Number SR–NASD–2004–145 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–145. 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. Copies of the filing also will be available for inspection and copying at the principal offices of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–145 and should be submitted on or before November 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2871 Filed 10–26–04; 8:45 am]

BILLING CODE 8010–01–P

[20] 15 U.S.C. 78s(b)(3)(a)(ii).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50572; File No. SR–Phlx–2004–61]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Its Equity Options Payment for Order Flow Program

October 20, 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 September 22, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and at the same time is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to modify the Exchange's equity options payment for order flow program for trades settling on or after September 1, 2004 through September 21, 2004. In addition, the Exchange proposes to amend its equity options payment for order flow program as it relates to the reimbursement of equity options payment for order flow funds, which was in effect for trades settling on or after August 2, 2004 through August 31, 2004.

Equity Options Payment for Order Flow Program Commencing September 22, 2004

The Exchange recently amended its equity options payment for order flow program.[3] Pursuant to that program, for trades settling on or after September 22, 2004, the Exchange will assess a payment for order flow fee as follows when Registered Options Traders (''ROTs'') trade against a customer order: (1) $1.00 per contract for options on the Nasdaq-100 Index Tracking Stock℠ traded under the symbol QQQ, currently the most actively traded equity option; [4] and (2) $0.40 per contract for the remaining top 150 equity options, other than the QQQ.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50471 (September 29, 2004), 69 FR 59636 (October 5, 2004) (SR–Phlx–2004–60) (''Release 34–50471'').

[4] QQQ is currently the most actively-traded equity option. The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[5] The top 150 options are calculated based on the most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation (''OCC'') and that are also traded on the Exchange. For example, if two of the most actively traded equity options, based on volume statistics provided by the OCC are not traded on the Exchange, then the next two most actively traded equity options that are traded on the Exchange will be selected. (For example, if the list of the top 150 options includes two options that are not traded on the Exchange, then the options ranked 151 and 152 will be included in the Exchange's top 150, assuming those options are traded on the Exchange). The measuring periods for the top 150 options are calculated every three months. For example, for trade months September, October and November, the measuring period to determine the top 150 options will be based on volume statistics from May, June and July. This cycle will continue every three months. Members will be notified of the top 150 options approximately two weeks before the beginning of a new three-month trading period. As discussed below, the payment for order flow fees are incurred only when the specialist elects to participate in the equity options payment for order flow program. The Exchange's fee schedule reflects the fee of $1.00 for options on the QQQ and $0.40 for the remaining top

Continued

The payment for order flow fee applies, in effect, to equity option transactions between a ROT and a customer.[6] In addition, a 500 contract cap per individual cleared side of a transaction is imposed.[7]

Specialist units [8] elect to participate or not to participate in the program in all options in which they are acting as a specialist by notifying the Exchange in writing no later than five business days prior to the start of the month.[9] If a specialist unit elects not to participate in the program, that specialist unit waives its right to any reimbursement of payment for order flow funds for the month(s) during which it elected to opt out of the program.[10]

Specialists request payment for order flow reimbursements on an option-by-option basis. The collected funds are used by each specialist unit to reimburse it for monies expended to attract options orders to the Exchange by making payments to order flow providers who provide order flow to the Exchange. They receive their respective funds only after submitting an Exchange certification form identifying the amount of the requested funds.[11] Each specialist unit establishes the amounts that will be paid to order flow providers.

Pursuant to the Exchange's current equity options payment for order flow program, any excess payment for order flow funds are carried forward to the next month by option and may not be applied retroactively to past deficits, which may be incurred when the specialist requests more than the amount collected.[12] Thus, excess funds will not be rebated to ROTs except in the limited situation discussed below, nor will deficits carry forward to subsequent months. ROTs may, however, receive a rebate of excess funds in a particular option for a particular month if the specialist unit does not request reimbursement by option of at least 50% of the total amount of payment for order flow funds billed to and collected from ROTs for each option in which that specialist unit is acting as specialist, as more fully described below.[13]

Specialists units may opt out entirely from the program as long as they notify the Exchange in writing by the 15th of the month, or the next business day if the 15th of the month is not a business day. If a specialist unit opts out of the program by the 15th of the month, no payment for order flow charges will be incurred for either the specialist unit or ROTs for transactions in the affected options for that month.

In addition to opting out entirely from the program, specialists may opt out of the program on an option-by-option basis if they notify the Exchange in writing no later than three business days after the end of the month (which is before the payment for order flow fee is billed). If a specialist unit opts out of an option at the end of the month, then no payment for order flow fees will be assessed on the applicable ROT(s) for that option. If a specialist unit opts out of the program in a particular option more than two times in a six-month period, it will be precluded from entering into the payment for order flow program for that option for the next three months.

If a specialist unit opts into the program (and does not opt out of the program entirely by the 15th day of the month or by option by the third business day after the end of the month) and does not request reimbursement by option of at least 50% of the total amount of payment for order flow funds billed to and collected from ROTs for each option in which that specialist unit is acting as the specialist, then any excess payment for order flow funds remaining after the specialist has been reimbursed will be rebated, on a pro rata basis, to the affected ROTs for those particular options in which the 50% threshold was not met.[14]

The payment for order flow fee is billed and collected on a monthly basis. Because the specialists are not being charged the payment for order flow fee for their own transactions, they may not request reimbursement for order flow funds in connection with any transactions to which they were a party.[15]

---

150 equity options, other than options on the QQQ. Any change to the rate at which the equity options payment for order flow fee is assessed would be the subject of a separate proposed rule change filed with the Commission.

[6] Thus, consistent with current practice, the ROT payment for order flow fee is not assessed on transactions between: (1) A specialist and a ROT; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. The ROT payment for order flow fee does not apply to index options or foreign currency options. Accordingly, the ROT payment for order flow fees applies, in effect, to equity option transactions between a ROT and a customer.

[7] Under the Exchange's equity options payment for order flow program, a 500 contract cap per individual cleared side of a transaction is imposed. Thus, the applicable payment for order flow fee is imposed only on the first 500 contracts, per individual cleared side of a transaction. For example, if a transaction consists of 750 contracts by one ROT, the applicable payment for order flow fee would be applied to, and capped at, 500 contracts for that transaction. Also, if a transaction consists of 600 contracts, but is equally divided among three ROTs, the 500 contract cap would not apply to any such ROT, and each ROT would be assessed the applicable payment for order flow fee on 200 contracts, as the payment for order flow fee is assessed on a per ROT, per transaction basis. *See* Securities Exchange Act Release Nos. 47958 (May 30, 2003), 68 FR 34026 (June 6, 2003) (proposing SR–Phlx–2002–87); and 48166 (July 11, 2003), 68 FR 42450 (July 17, 2003) (approving SR–Phlx–2002–87). *See also* Release 34–50471.

[8] The terms ''specialist'' and ''specialist unit'' are used interchangeably herein.

[9] A specialist unit must notify the Exchange in writing to either elect to participate or not to participate in the program. Once a specialist unit has either elected to participate or not to participate in the Exchange's equity options payment for order flow program in a particular month, it is not required to notify the Exchange in a subsequent month, as described above, if it does not intend to change its participation status. For example, if a specialist unit elected to participate in the program and provided the Exchange with the appropriate notice, that specialist unit would not be required to notify the Exchange in the subsequent month(s) if it intends to continue to participate in the program. However, if it elects not to participate (a change from its current status), it would need to notify the Exchange in accordance with the requirements stated above.

[10] For any month (or part of a month where an option is allocated mid-month) the specialist unit has elected to opt out of the program, no ROT payment for order flow fee will apply.

[11] While all determinations concerning the amount that will be paid for orders and which order flow providers shall receive these payments will be made by the specialists, the specialists will provide to the Exchange on an Exchange form certain information, including what firms they paid for order flow, the amount of the payment, and the price paid per contract. The purpose of the form, in part, is to assist the Exchange in determining the effectiveness of the proposed fee and to account for and track the funds transferred to specialists, consistent with normal bookkeeping and auditing practices. In addition, certain administrative duties will be provided by the Exchange to assist the specialists.

[12] Specialists may not receive more than the payment for order flow amount billed and collected in a given month; however, the amounts specialists receive may include excesses, if any, for that option, carried forward from prior months, up to the payment for order flow amount billed and collected in such month. Telephone conversation between Cynthia K. Hoekstra, Counsel, Phlx, and David Liu, Attorney, Division, Commission, on September 24, 2004.

[13] The Exchange will periodically review its equity options payment for order flow program to determine whether a cap on the amount collected for each option should be imposed in the future. Any such cap would have to be filed with the Commission as a proposed rule change under Section 19(b)(1) of the Act.

[14] For example, if a specialist unit requests $10,000 in reimbursement for one option and the total amount billed and collected from the ROTS was $30,000, then the specialist unit did not satisfy the 50% threshold, given the fact that it did not request reimbursement of at least $15,000. Therefore, the remaining amount of $20,000 will be rebated to the ROTs on a pro rata basis. If ROT A was assessed $15,000 in payment for order flow fees, he would receive a rebate of $10,000 ($15,000/$30,000 = 50% and 50% of $20,000 is $10,000). If ROT B was assessed $8,000 in payment for order flow fees, it would receive $5,333.33, which represents 26.67% ($8,000/$30,000) of $20,000. If ROT C was assessed $7,000 in payment for order flow fees, it would receive $4,666.67, which represents 23.33% ($7,000/$30,000) of $20,000.

[15] The amount a specialist may receive in reimbursement is limited to the percentage of ROT monthly volume to total specialist and ROT monthly volume in the equity options payment for order flow program. For example, if a specialist unit has a payment for order flow arrangement with an

The Exchange may audit a specialist's payments to payment-accepting firms to verify the use and accuracy of the payment for order flow funds remitted to the specialists based on their certification.[16]

The Exchange continues to implement a quality of execution program.[17]

The payment for order flow fees as set forth in this proposal would be in effect for trades settling on or after September 1, 2004 through September 21, 2004.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for its proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement the current equity options payment for order flow program for trades settling on or after September 1, 2004 through September 21, 2004,[18] and to adopt changes to the reimbursement request process in effect for trades settling on or after August 2, 2004 through August 31, 2004. The Phlx believes that implementing a consistent equity options payment for order flow program for the month of September should minimize member confusion. In addition, requiring specialists to request reimbursement for payment for order flow funds on an option-by-option basis and rebating any excess funds collected but not reimbursed to specialists to the affected ROTs would provide for a method of distributing those funds collected under the August equity options payment for order flow program, which is no longer in effect.[19]

The Exchange believes that adopting the proposed equity options payment for order flow program should allow the Exchange to implement a more competitive equity options payment for order flow program. Equity options payment for order flow programs are in place at each of the other options exchanges. The Phlx states that the revenue generated by the $1.00 or $0.40 payment for order flow fees, as outlined in this proposal, is intended to be used by specialist units to compete for order flow in equity options listed for trading on the Exchange. The Exchange believes that, in today's competitive environment, changing its equity options payment for order flow program to compete more directly with other options exchanges is important and appropriate.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act[20] in general, and furthers the objectives of section 6(b)(4) of the Act[21] in particular, in that it is an equitable allocation of reasonable fees among Phlx members and that it is designed to enable the Exchange to compete with other markets in attracting customer order flow. Because the equity options payment for order flow fees are collected only from member organizations respecting customer transactions, the Phlx believes that there is a direct and fair correlation between those members who fund the equity options payment for order flow fee program and those who receive the benefits of the program. The Exchange states that ROTs also potentially benefit from additional customer order flow. In addition, the Phlx believes that the proposed payment for order flow fees would serve to enhance the competitiveness of the Phlx and its members and that this proposal therefore is consistent with and furthers the objectives of the Act, including Section 6(b)(5) thereof,[22] which requires the rules of exchanges to be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Phlx believes that attracting more order flow to the Exchange should, in turn, result in increased liquidity, tighter markets and more competition among exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Phlx states that no written comments were either solicited or received.[23]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

order flow provider to pay that order flow provider $0.70 per contract for order flow routed to the Exchange and that order flow provider sends 90,000 customer contracts to the Exchange in one month for one option, then the specialist would be required, pursuant to its agreement with the order flow provider, to pay the order flow provider $63,000 for that month. Assuming that the 90,000 represents 30,000 specialist transactions, 20,000 ROT transactions and 40,000 transactions from firms, broker-dealers and other customers, the specialist may request reimbursement of up to 40% (20,000/50,000) of the amount paid ($63,000 × 40% = $25,200). However, because the ROTs will have paid $8,000 into the payment for order flow fund for that month, the specialist may collect only $8,000 (20,000 contracts × $0.40 per contract) of its $25,200 reimbursement request, plus, if applicable, any excess funds for that particular option carried over from a prior month up to the specialist's $25,200 reimbursement request.

[16] *See* Exchange Rule 760.

[17] *See, e.g.,* Securities Exchange Act Release No. 43436 (October 11, 2000), 65 FR 63281 (October 23, 2000) (SR–Phlx–00–83).

[18] The Exchange represents that its members were notified of modifications to the Exchange's equity options payment for order flow program in memoranda sent to members and member organizations on August 9, 2004, September 1, 2004, September 7, 2004, and September 8, 2004.

[19] SR–Phlx–2004–50 was filed with the Commission on July 29, 2004 and subsequently amended on August 16, 2004. SR–Phlx–2004–56 was filed with the Commission on August 16, 2004. SR–Phlx–2004–50 and SR–Phlx–2004–56 were both abrogated by the Commission. *See* Securities Exchange Act Release No. 50420 (September 22, 2004), 69 FR 58007 (September 28, 2004) (''Abrogation Order''). SR–Phlx–2004–50, as amended, modified the Phlx's fee schedule to assess an equity options payment for order flow fee as follows when ROTs trade against a customer order by: (1) Assessing a $1.00 per contract (for options on the QQQ) and $0.35 per contract (for all equity options other than options on the QQQ); (2) permitting specialists to opt in or out of the program by notifying the Exchange in writing at least five business days prior to the start of the month; and (3) combining the payment for order flow fees collected from ROTs in one account to form a ''pool'' from which specialists may request reimbursement for the amounts that they pay to order flow providers to send order flow to the Exchange. SR–Phlx–2004–56 amended the Phlx's fees schedule to revise its equity options payment for order flow program by (1) requiring a specialist unit to pay equity option payment for order flow fees in a given month at the same rate as ROTs, if the specialist unit elects to participate in the program and does not pay at least 50% of the total amount of equity options payment for order flow funds collected from ROTs in the options for which that specialist unit is acting as the specialist; and (2) providing that specialist units may opt out of the equity options payment for order flow program, as long as they notify the Exchange in writing by the 15th day of the month.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(4).

[22] 15 U.S.C. 78f(b)(5).

[23] Previously, in connection with SR–Phlx–2004–50, the Exchange received one written comment letter, dated August 10, 2004, which was forwarded to the Commission on August 20, 2004.

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–Phlx–2004–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–61. 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. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–61 and should be submitted on or before November 17, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[24] Specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[25] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

On July 29, 2004 [26] and August 16, 2004,[27] the Exchange filed proposed rule changes with the Commission, which were immediately effective,[28] relating to the Exchange's equity options payment for order flow program for trades settling on or after August 2, 2004. On September 22, 2004, the Commission summarily abrogated these proposed rule changes.[29] On that same day, the Exchange filed a proposed rule change, which was immediately effective, that implemented a new payment for order flow program for trades settling on or after September 22, 2004.[30] Because, under Section 19(b)(3)(C) of the Act,[31] the Abrogation Order does not affect the validity or force of the proposed rule changes filed on July 29, 2004,[32] and August 16, 2004[33] during the period that they were in effect (*i.e.*, for trades settling on or after August 2, 2004 through September 21, 2004), this proposed rule change would modify the Exchange's equity options payment for order flow program that was in effect for trades settling on or after September 1, 2004 through September 21, 2004 to be consistent with the equity options payment for order flow program that has been in effect as of September 22, 2004.

The Exchange also proposes to permit specialists to request reimbursement for payment for order flow funds on an option-by-option basis and to rebate to the affected ROTs any excess funds collected, but not distributed to, specialists for trades settling on or after August 2, 2004 through August 30, 2004.

The Commission believes that the Exchange's proposal to modify its equity options payment for order flow program that was in effect immediately preceding the Abrogation Order would provide for a uniform program for the month of September 2004 and thus would reduce confusion and promote consistency with respect to the application of its payment for order flow program for trades settling during the month of September 2004. The Commission further believes that the Exchange's proposal to provide a method for distributing payment for order flow fees, on an option-by-option basis, for trades settling during August 2004 and for rebating any excess fees that were collected but not distributed would provide an appropriate method for handling fees collected under the equity options payment for order flow program that was in effect for August 2004, but was later summarily abrogated by the Commission.[34] Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,[35] to approve the proposed rule change prior to the 30th day of the date of publication of notice of filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (File No. SR–Phlx–2004–61) be approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2868 Filed 10–26–04; 8:45 am]

BILLING CODE 8010–01–P

[24] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(4).

[26] *See* SR–Phlx–2004–50.

[27] *See* SR–Phlx–2004–56.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] *See* Abrogation Order, *supra* note 19. Under Section 19(b)(3)(C) of the Act, any proposed rule change that has taken effect pursuant to section 19(b)(3)(A) of the Act may be enforced to the extent it is not inconsistent with the Act, the rules and regulations thereunder, and applicable federal and state law. 15 U.S.C. 78s(b)(3)(C).

[30] *See* Securities Exchange Act Release No. 50471 (September 29, 2004), 69 FR 59636 (October 5, 2004) (SR–Phlx–2004–60).

[31] 15 U.S.C. 78s(b)(3)(C).

[32] *See* SR–Phlx–2004–50.

[33] *See* SR–Phlx–2004–56.

[34] *See* Abrogation Order, *supra* note 19.

[35] 15 U.S.C. 78s(b)(2).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before December 27, 2004.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to

minimize the estimated burden and enhance the quality of the collection, to Edsel Brown, Assistant Administrator, Office of Technology, Small Business Administration, 409 3rd Street SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Edsel M. Brown Jr., Assistant Administrator, 202–205–7343, *edsel.brown@sba.gov* or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Data Collection for SBIR/STTR Public and Government Databases''.

Description of Respondents: All firms or individuals applying for a Phase 1 or Phase II award from the SBIR or STTR programs.

Form No.: N/A.

Annual Responses: 30,000.

Annual Burden: 15,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 04–24011 Filed 10–26–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4880]

Culturally Significant Objects Imported for Exhibition Determinations: ''Jacob van Ruisdael: Master of Landscape''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Jacob van Ruisdael: Master of Landscape,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, from on or about June 26, 2005, until on or about September 18, 2005, at the Philadelphia Museum of Art from on or about October 23, 2005 until on or about February 5, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 20, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–24053 Filed 10–26–04; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 4824]

Notice of Proposal To Extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material From the Pre-Hispanic Cultures of the Republic of El Salvador

The Government of the Republic of El Salvador has informed the Government of the United States of its interest in an extension of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Pre-Hispanic Cultures of the Republic of El Salvador.

Pursuant to the authority vested in the Assistant Secretary for Educational and Cultural Affairs, and pursuant to the requirement under 19 U.S.C. 2602(f)(1), an extension of this Memorandum of Understanding is hereby proposed.

Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of this Memorandum of Understanding, the designated list of restricted categories of material, and related information can be found at the following Web site: *http://exchanges.state.gov/culprop*.

Dated: October 18, 2004.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–24051 Filed 10–26–04; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 4825]

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) there will be a meeting of the Cultural Property Advisory Committee on Thursday, November 18, 2004, from approximately 9 a.m. to 5 p.m., and on Friday, November 19, from approximately 9 a.m. to 2 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. During its meeting the Committee will review a proposal to extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Pre-Hispanic Cultures of the Republic of El Salvador. The Government of the Republic of El Salvador has notified the Government of the United States of America of its interest in such an extension. The Committee will also conclude its review of a request from the Government of the Republic of Colombia, focusing on Colonial ethnological material.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The text of the Act, the text of the subject Memorandum of Understanding, and related information may be found at *http://exchanges.state.gov/culprop.* Portions of the meeting on November 18 and 19 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). However, on November 18, the Committee will hold an open session, approximately 11 a.m. to 12 Noon, to receive oral public comment on the proposal to extend. Persons wishing to attend this open session should notify the Cultural Heritage Center of the Department of State at (202) 619–6612 by Thursday, November 5, 2004, 3 p.m. (EDT) to arrange for admission, as seating is limited.

Those who wish to make oral presentations should request to be

scheduled and submit a written text of the oral comments by November 5 to allow time for distribution to Committee members prior to the meeting. Oral comments will be limited to five minutes each to allow time for questions from members of the Committee and must specifically address the determinations under Section 303(a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602, pursuant to which the Committee must make findings. This citation for the determinations can be found at the web site noted above.

The Committee also invites written comments and asks that they be submitted no later than November 5. All written materials, including the written texts of oral statements, should be faxed to (202) 260–4893.

Dated: October 18, 2004.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–24052 Filed 10–26–04; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 4867]

Announcement of Meetings of the International Telecommunication Advisory Committee

Summary: The International Telecommunication Advisory Committee will meet in November to prepare positions for the next meeting of Study Groups 9 and 15 of the International Telecommunication Union Telecommunication Standardization Sector. Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair.

The International Telecommunication Advisory Committee (ITAC) will meet on Monday, November 15, 2004, 10 a.m. until 4 p.m. at the offices of Communication Technologies, Inc. (COMTek), 14151 Newbrook Dr., Ste. 400, Chantilly, VA 20151 to prepare for the next meetings of ITU–T Study Groups 15 and 9. People desiring to attend the meeting should give their name and organization not later than November 11 to Marcie Geissinger (*marcie.g@comcast.net* or (303) 499–2145). A conference bridge will be provided for the second part of the meeting addressing SG9 preparations. Directions to the meeting location and conference bridge information may be obtained by calling the ITAC Secretariat at (202) 647–2593.

Dated: October 21, 2004.

Cecily Holiday,

Director, ITU Radiocommunication Sector Affairs, International Communications & Information Policy, Department of State.

[FR Doc. 04–24133 Filed 10–26–04; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 15, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application

Docket Number: OST–2004–19369.
Date Filed: October 12, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SWP 0094 dated 5 October 2004. Mail Vote 407 Europe-South West Pacific r1–r14. *Minutes:* PTC23 EUR–SWP 0093 dated 24 September 2004. *Tables:* PTC23 EUR–SWP Fares 0053 dated 5 October 2004. *Intended Effective Date:* 1 April 2005.

Docket Number: OST–2004–19370.
Date Filed: October 12, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–J/K 0117 dated 17 September 2004. TC23/TC123 Europe-Japan, Korea Resolutions r1–r23. *Minutes:* PTC23 EUR–J/K 0118 dated 8 October 2004. *Tables:* PTC23 EUR–J/K Fares 0061 dated 17 September 2004. *Corrections:* PTC23 EUR–J/K Fares 0062 dated 24 September 2004. PTC23 EUR–J/K Fares 0063 dated 8 October 2004. *Intended Effective Date:* 1 April 2005.

Docket Number: OST–2004–19372.
Date Filed: October 12, 2004.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0503 dated 15 October 2004. Mail Vote 415—Resolution 033a—CTC2/12/23. Establishing Cargo Rates and Charges from Poland in Zloty (PLN). *Intended Effective Date:* 1 November 2004.

Docket Number: OST–2004–19373.
Date Filed: October 12, 2004.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 409, PTC23 ME–TC3 0217 dated 12 October 2004. Middle East-South East Asia Resolutions r1–r16. *Minutes:* PTC23 ME–TC3 0215 dated 5 October 2004. *Tables:* PTC23 ME–TC3 Fares 0099 dated 15 October. *Intended Effective Date:* 15 January 2005, 1 April 2005.

Andrea M. Jenkins,

Program Manager, Federal Register Liaison.

[FR Doc. 04–24060 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 15, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2004–19368.
Date Filed: October 12, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 2, 2004.
Description: Application of Arctic Circle Air Service, Inc., requesting the transfer and subsequent surrender of a purchased certificate of public convenience and necessity authorizing interstate scheduled air transportation pursuant to section 41102 of Title 49 of the United States Code.

Docket Number: OST–2004–19398.
Date Filed: October 13, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 3, 2004.
Description: Application of Tradewinds Airlines, Inc., requesting a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail to and from the countries that have concluded Open Skies Air Services Agreements with the United States.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–24059 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–3637, FMCSA–99–6156, FMCSA–2000–7006, FMCSA–2000–7165, FMCSA–2002–12294]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 16 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective November 9, 2004. Comments from interested persons should be submitted by November 26, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–98–3637, FMCSA–99–6156, FMCSA–2000–7006, FMCSA–2000–7165, and FMCSA–2002–12294 by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 16 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 16 applications for renewal on their merits and decided to extend each exemption for a renewable two year period. They are:

Benny J. Burke
Milton Coleman
Gary R. Evans
Harlan L. Gunter
Steven H. Heidorn
Danny E. Hillier
Gary L. Killian
Stephen C. Perdue
Doyle R. Roundtree
Garry R. Setters
Jimmy E. Settle
Jesse M. Sikes
Kenneth E. Suter, Jr.
Denny V. Traylor
Noel S. Wangerin
Hubert Whittenburg

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 16 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285, 63 FR

54519, 67 FR 67234, 64 FR 54948, 65 FR 159, 65 FR 20245, 65 FR 57230, 67 FR 57266, 65 FR 33406, 65 FR 57234, 67 FR 46016, 67 FR 57267). Each of these 16 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 26, 2004.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: October 20, 2004.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 04–23967 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2004–18885]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 29 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: October 27, 2004.

FOR FURTHER INFORMATION CONTACT: Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On September 1, the FMCSA published a notice of receipt of exemption applications from 29 individuals, and requested comments from the public (69 FR 53493). The 29 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Paul G. Albrecht, David W. Brown, David J. Caldwell, Walden V. Clarke, Donald O. Clopton, Awilda S. Colon, Richard B. Eckert, Charles B. Edwards, Zane G. Harvey, Jr., Robert T. Hill, Dale E. Johnson, Jimmy D. Johnson II, Jeffrey M. Keyser, Donnie A. Kildow, Carl M. McIntire, John C. McLaughlin, Daniel A. McNabb, David G. Meyers, Thomas L. Oglesby, Michael J. Paul, Russell A. Payne, Rodney M. Pegg, Raymond E. Peterson, Zbigniew P. Pietranik, Dennis E. Pinkston, John C. Rodriguez, Robert B. Schmidt, Wesley L. Schoonover, and Charles E. Wood.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 29 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on October 1, 2004. Two comments were received.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket, FMCSA–98–4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 29 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, corneal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but nine of the applicants were either born with their vision impairments or have had them since childhood. The nine individuals who sustained their vision conditions as

adults have had them for periods ranging from 4 to 44 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 29 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 37 years. In the past 3 years, three of the drivers have had convictions for traffic violations. Four of these convictions were for speeding and one was for ''failure to obey traffic sign.'' Two drivers were involved in a crash but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 1, 2004, notice (69 FR 53493). Since there were no substantial docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here, but note that information presented at 69 FR 53496 indicating that applicant 19, Thomas L. Oglesby, reported he has driven straight trucks for 30 years, accumulating 2.4 million miles, is in error. The information should have indicated that Mr. Oglesby reported he has driven tractor-trailer combinations for 30 years, accumulating 2.4 million miles. Our summary analysis of the applicants is supported by this correction and the information published on September 1, 2004 (69 FR 53493).

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 29 applicants receiving an exemption, we note that the applicants have had only two crashes and five traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C.

31315 and 31136(e) to the 29 applicants listed in the notice of September 1, 2004 (69 FR 53493).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 29 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received two comments in this proceeding. The comments were considered and are discussed below.

Mr. William Whitaker did not comment on the receipt of applications for exemption, but requested information about applying for an exemption for himself. FMCSA is responding to him separately by letter.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

Based upon its evaluation of the 29 exemption applications, the FMCSA exempts Paul G. Albrecht, David W. Brown, David J. Caldwell, Walden V. Clarke, Donald O. Clopton, Awilda S. Colon, Richard B. Eckert, Charles B. Edwards, Zane G. Harvey, Jr., Robert T. Hill, Dale E. Johnson, Jimmy D. Johnson II, Jeffrey M. Keyser, Donnie A. Kildow, Carl M. McIntire, John C. McLaughlin, Daniel A. McNabb, David G. Meyers, Thomas L. Oglesby, Michael J. Paul, Russell A. Payne, Rodney M. Pegg, Raymond E. Peterson, Zbigniew P. Pietranik, Dennis E. Pinkston, John C. Rodriguez, Robert B. Schmidt, Wesley L. Schoonover, and Charles E. Wood from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: October 21, 2004.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 04–24061 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Long Island Rail Road (Waiver Petition Docket Number FRA–2004–18854)

The Long Island Rail Road (LIRR) seeks a waiver of compliance from certain provisions of the *Railroad Locomotive Safety Standards,* 49 CFR part 229. Specifically, LIRR requests relief from the requirements of 49 CFR 229.27(a)(2) *Annual Tests* and 49 CFR 229.29(a) *Biennial Tests,* applicable to a control group of five EMD DE/DM30–AC locomotives equipped with Computer Controlled Brake I (CCB I) type brake equipment furnished by New York Air Brake Corporation (NYAB) of Watertown, New York.

The five locomotives designated for the control group will be Model EMD DE/DM30–AC, built by General Motor's Electro Motive Division (EMD), accepted new by LIRR in 1999, and equipped with NYAB's CCB I brake equipment. The LIRR currently operates a fleet of forty six (46) of this model type(s) and configured locomotives. The current CCB I periodic brake equipment maintenance intervals are 1840 days (five years) in accordance with the FRA Docket Number 2000–7367.

In October 2003, CCB I, from a randomly selected locomotive at the end of a five-year COT&S interval, was removed and sent to New York Air Brake for tests and a tear-down inspection. A test report of this equipment was submitted to the FRA from NYAB to comply with Section 5.1.6 of ABT–3164 as related to the CCB I product five year COT&S 2000–7367 waiver. In summary of that report, New York Air Brake noted that the LIRR's CCB I air brake equipment was fully serviceable at five years of age.

As a result of the NYAB report, the LIRR is seeking relief on the 1840 day (5 year) COT&S on five locomotive described as the ''control group of locomotives''. The control group of locomotives will be utilized as a test to determine CCB I brake condition when the maintenance cycle is extended past five-year maintenance interval.

The control group of five locomotives will all have their COT&S extended past the 1840 (5 year) COT&S with the following proposed schedule: one locomotive to 2208 days (6 years), two locomotives to 2576 days (7 years), and the two remaining locomotives to 2944 days (8 years). During the testing period for the control group, the remaining locomotives in the LIRR fleet will continue regularly scheduled periodic

maintenance of CCB I equipment at the established 1840-day interval.

Part 229.27(a)(2) requires that, ''Brake cylinder relay valve portions, main reservoir safety valves, brake pipe vent valve portions, feed and reducing valve portions in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested'' at intervals that do not exceed 368 calendar days. Part 229.29(a) requires in part that ''* * * all valves, valve portions, MU locomotive brake cylinders and electric-pneumatic master controllers in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested at intervals that do not exceed 736 calendar days.

LIRR requests these provisions be temporarily waived on the ''control group of locomotives'' to allow them to conduct a long term test program designed to show that NYAB's electronic air brake technology has sufficiently improved overall system reliability and safety to a point where it is now possible to move toward a component repair as required, performance based COT&S criterion similar in scope to that outlined in a previous waiver granted on September 1, 2000 to CSX Transportation in Docket FRA–1999–6252. This referenced waiver covers CSXT locomotives utilizing NYAB's Computer Controlled Brake (CCB) equipment, with the intent of moving to a component repair as required, performance-based COT&S criterion.

As part of this waiver request, LIRR recommends that a detailed test plan, necessary for properly tracking and documenting the results, be jointly developed between LIRR, NYAB, and FRA. At the completion of the test program, LIRR further requests that the FRA conduct a formal review of the results relative to the objective of moving toward a ''performance-based COT&S'' criterion. In addition, the LIRR and NYAB are currently in the process of establishing test plans to specify the on-locomotive tests and tear-down inspection procedures for the CCB I components from the ''control group of locomotives''. The plans will be submitted to the FRA for approval when they are complete. LIRR will also submit to the FRA the locomotive road numbers that will be representative of the locomotives that will be comprised in the ''control group of locomotives''.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2004–18854) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on October 20, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–24062 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–06–P

Federal Register

Wednesday,
October 27, 2004

Part II

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Department of the Treasury

Office of Thrift Supervision

Internal Ratings-Based Systems for Retail Credit Risk for Regulatory Capital; Notice

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 04–22]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1215]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2004–48]

Internal Ratings-Based Systems for Retail Credit Risk for Regulatory Capital

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS).

ACTION: Proposed supervisory guidance with request for comment.

SUMMARY: The OCC, Board, FDIC, and OTS (Agencies) are publishing for industry comment a document that sets forth proposed supervisory guidance for banks, savings associations, and bank holding companies (banking organizations) that would use the internal-ratings-based (IRB) approach to determine their regulatory capital requirements for retail credit exposures. The Agencies described the IRB approach in general terms in an advance notice of proposed rulemaking (ANPR) in August 2003 and expect to issue a notice of proposed rulemaking (NPR) in 2005 that would comprehensively implement the IRB approach and other elements of the International Convergence of Capital Measurement and Capital Standards: A Revised Framework, which was adopted by the Basel Committee on Banking Supervision in June 2004 (Basel II Framework). Under the IRB approach, banking organizations would use internal estimates of certain risk parameters as key inputs in the determination of their regulatory capital requirements. The Agencies intend for this guidance to provide banking organizations, in anticipation of the NPR, with a description of the current views of the Agencies regarding (and an opportunity for interested persons to comment on) the components and characteristics of a qualifying IRB credit risk measurement, data maintenance, segmentation, and quantification framework for retail exposures.

DATES: Comments must be submitted on or before January 25, 2005.

ADDRESSES: Comments should be directed to:

OCC: Office of the Comptroller of the Currency, 250 E Street SW., Mail stop 1–5, Washington, DC 20219, Attention: Docket No. [04–22], Fax number (202) 874–4448 or Internet address: *regs.comments@occ.treas.gov.* Comments may be inspected and photocopied at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You may submit comments, identified by docket number [04–22], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OCC Web Site: http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''
- *E-mail address: regs.comments@occ.treas.gov*. Please include docket number [04–22] in the subject line of the message.
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Public Reference Room, Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Reference Room, Mail Stop 1–5, Washington, DC 20219

Board: You may submit comments, identified by Docket No. OP–1215, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- *E-mail: comments@FDIC.gov.*
- *Public Inspection:* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Instructions: Submissions received must include the agency name and title for this notice. Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

OTS: You may submit comments, identified by No. 2004–48, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@ots.treas.gov*. Please include No. 2004–48 in the subject line of the message, and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004–48.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004–48.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,*

including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Mitchell Stengel, Senior Expert, Basel Credit Risk Modeling, Risk Analysis, (202) 874–5250; Daniel L. Pearson, National Bank Examiner, Credit Risk, (202) 874–5170; and Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5190, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Sabeth Siddique, Manager, (202) 452–3861, Division of Banking Supervision and Regulation; Mark E. Van Der Weide, Senior Counsel, (202) 452–2263, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; and William W. Lang, Vice President, Supervision, Regulation and Credit, Federal Reserve Bank of Philadelphia, (215) 574–7225. For users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

FDIC: Peter Hirsch, Basel II Project Manager, (202) 898–6751, Jon Eagar, Senior Examiner, (801) 263–3090, ext. 4726, Division of Supervision and Consumer Protection; Michael B. Phillips, Counsel, (202) 898–3581, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Fred Phillips-Patrick, Manager, Credit Risk, (202) 906–7295, Supervision Policy; Karen Osterloh, Special Counsel, (202) 906–6639, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Agencies issued an ANPR on August 4, 2003, which sought comment on a substantially revised capital adequacy framework for large and internationally active U.S. banking organizations. *See* 68 FR 45900. The content of the ANPR was based in large part on the April 2003 version of the Basel II Framework.[1] Specifically, the ANPR described significant elements of the IRB approach for computing credit risk capital requirements and the Advanced Measurement Approaches for computing operational risk capital requirements (AMA approach). Under the ANPR, certain banking organizations would be required to adopt the IRB and AMA approaches (core banks) and other banking organizations that met certain criteria would have the ability to adopt the IRB and AMA approaches on a voluntary basis (opt-in banks). Under the IRB and AMA approaches outlined in the ANPR, core banks and opt-in banks would use internal estimates of certain risk components as key inputs in the determination of their regulatory capital requirements.

Contemporaneously with the ANPR, the Agencies also issued for public comment two proposed supervisory guidance documents relating to the revised capital framework. *See* 68 FR 45949. The first document provided proposed supervisory guidance on IRB systems for corporate credit risk. This document described then-existing supervisory views on the credit risk measurement and management systems of banking organizations that intended to adopt the IRB approach for computing capital requirements for corporate credit risk exposures. The second document provided proposed supervisory guidance on AMA approaches for operational risk.

In June 2004, the Basel Committee on Banking Supervision published a further revised version of the Basel II Framework.[2] In light of the timetable for implementation of the Basel II Framework on an international basis and the complexity and long-term operational planning and program implementation needs of the core banks and opt-in banks, the Agencies are publishing for comment the following proposed IRB retail guidance document. The issuance of this document, together with the proposed IRB supervisory guidance on corporate credit risk and the proposed AMA supervisory guidance on operational risk, is part of an effort by the Agencies to gather as much industry feedback from interested parties as possible before the issuance of the NPR, which the Agencies expect will propose a revised capital adequacy standard based on the Basel II Framework for large and internationally active U.S. banking organizations. Issuing this proposed guidance before the formal issuance of the NPR will facilitate both (i) public input on the qualifying standards and infrastructure requirements for IRB and AMA and (ii) understanding of current Agency thinking for those banking organizations that expect to be core banks or opt-in banks and have sought additional guidance so that they may voluntarily begin operational planning to qualify for use of the IRB and AMA approaches at the earliest possible time.

Banking organizations should note, however, that this retail IRB guidance, like the proposed corporate IRB guidance and the proposed AMA operational risk guidance, is only a proposal. Although these three proposed guidance documents reflect the views of the Agencies at the time of issuance concerning the elements of an appropriate IRB and AMA risk management infrastructure for core and opt-in banks, the guidance documents are subject to substantial change based on comments submitted by banking organizations and other interested parties, further analysis by the Agencies, results of a Quantitative Impact Study, evolution of the Basel II Framework, and technological advances in the risk measurement and management disciplines.

The proposed retail guidance, like the proposed corporate IRB guidance and the proposed operational risk AMA guidance, includes many supervisory standards that ultimately may become part of the NPR rule text as proposed minimum qualifying requirements for use of the IRB and AMA approaches. The Agencies included these standards in the proposed guidance documents in order to provide banking organizations with coherent and comprehensive guidance as to the current views of the Agencies on the elements of an IRB and AMA risk management infrastructure. The proposed guidance documents do not reflect any final decisions by the Agencies about the content of the final rule, and no such decisions will be made by the Agencies prior to a full evaluation of the comments on the future NPR.

[1] *See* The New Basel Capital Accord (April 2003) (available at *http://www.bis.org*). The Basel II Framework sets out both a Foundation and Advanced IRB approach. However, for purposes of domestic U.S. implementation, the ANPR only proposed adoption of the Advanced IRB approach.

[2] See International Convergence of Capital Measurement and Capital Standards (June 2004) (available at *http://www.bis.org*). The Basel Committee on Banking Supervision is a committee of banking supervisory authorities that was established by the central bank governors of the Group of Ten countries in 1975. It consists of senior representatives of bank supervisory authorities and central banks from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

Request for Comments

The Agencies request comment on whether any of the standards set forth in this proposed retail IRB guidance should be revised, deleted, or supplemented, and which of these standards should be (1) mandatory minimum qualifying criteria for use of the retail IRB approaches, or (2) criteria for supervisory guidance purposes only.

We seek comment on all other aspects of the following proposed retail guidance document as well, including (1) the important supervisory expectations (referred to as supervisory standards in the guidance document) that are designated in the document by the prefix ''RS;'' (2) the methodology for the estimation of the three IRB segment-level credit risk parameters; and (3) the framework for the evaluation and oversight of retail exposure credit risk, which includes provisions covering segmentation, quantification, data maintenance, and control and oversight mechanisms.

In particular, the Agencies are interested in industry comment on the following issues:

1. *Qualifying Revolving Exposures (QRE) Volatility Requirement.* This proposed retail IRB guidance does not set forth criteria for defining what will constitute a ''low'' ratio of loss rate volatility to average loss rate for the purpose of qualification for QRE capital treatment. (See paragraphs 160 to 164 of the proposed guidance.) In developing the NPR, the Agencies will consider various options for addressing this concern and will provide additional information regarding QRE capital treatment. The Agencies seek comment on ways to implement the low volatility requirement for QRE sub-portfolios.

2. *Definition of Default.* This proposed retail IRB guidance (paragraph 98) stipulates that a retail exposure will be considered in default if any one of three ''loss recognition events'' occurs. One of these three events is that ''The exposure is put on non-accrual status.''

The Agencies acknowledge that there is not a requirement for placing delinquent retail exposures on nonaccrual status for either Call Report/Thrift Financial Report purposes or for GAAP. Nonetheless, many banks choose to put certain retail loans on nonaccrual and report these as such on their Call Reports/Thrift Financial Reports and financial statements.

The Agencies invite comment on this particular element of the proposed definition of default, including detailed explanations of why banking organizations favor or oppose the inclusion of nonaccrual status in the definition of default.

3. *Loss Given Default (LGD) Estimation.* When the loss severity of a retail portfolio exhibits significant cyclical variability, this proposed retail IRB guidance states that a bank must estimate an LGD that reflects periods of high credit losses for the particular portfolio (*e.g.*, mortgages). The period of high credit losses may be different for each retail portfolio. (See standard RS–22 and paragraph 127.) The Agencies invite comment on various issues related to estimating LGD for such periods:

- How should ''periods of high credit losses'' (also referred to as periods when credit losses are ''substantially higher than average'') for a portfolio be defined?
- What methods could be used to estimate an LGD appropriate to such periods?
- Should the LGD adjustment for high credit losses reflect the likely LGD when credit losses are high at the product or portfolio level for the particular bank (legal entity), or for a nationally diversified portfolio?
- How will a bank ensure that the LGD will reflect any unique or predictive risk characteristics of individual segments or small groups of segments if the period of high credit losses is defined at an aggregated level?
- If segments are defined across multiple legal entities, how will the banking organization ensure that the capital levels accurately reflect the unique risk of assets held by each legal entity?

The Agencies, through the Basel Committee on Banking Supervision, are undertaking additional work to clarify LGD estimation.

4. *Criteria for Assigning Exposures to Retail Categories.* Because each risk category has its own risk-weight function, assignment to different risk categories results in different capital requirements. A variety of loan types, especially real estate loans, could be placed in more than one retail or corporate IRB risk category. The Agencies request comment on whether the criteria for assigning exposures to retail categories are appropriate for the credit risk of the exposures. For example, is four units the appropriate limit on the number of units in a residential property to meet the definition of a residential mortgage loan? In addition, are small business loans appropriately categorized based on whether they are primarily or partially secured by residential real estate?

Paperwork Reduction Act

Each of the Agencies is subject to the Paperwork Reduction Act of 1995 (PRA).[3] The rulemaking initiated by the ANPR likely will impose requirements for core and opt-in banks, either in the regulations themselves or as part of interagency implementation guidance, that are covered by the PRA. This proposed retail IRB guidance describes the current views of the Agencies as to the components and characteristics of a qualifying IRB credit risk measurement, data maintenance, segmentation, and quantification framework for retail exposures. It is important that banking organizations recognize in reviewing the proposed guidance that it is subject to substantial change based on the comments received during the rulemaking process, further analysis by the Agencies, evolution of the Basel II Framework, and other developments.

Commenters on this proposed retail IRB guidance are asked to provide any estimates that they can reasonably determine about the time, effort, and financial resources that will be required to develop and maintain the plans, reports, and records discussed in the proposed guidance. Commenters also are requested to specify whether the described capital and methodological standards would necessitate the acquisition or development or new compliance/information systems or the significant modification of existing compliance/information systems.

The Agencies also invite comment on:

(1) Whether the collections of information contained in the proposed guidance are necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) What would be an accurate estimate of the burden of the proposed information collections;

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

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Respondents/recordkeepers are not required to respond to any collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

[3] 44 U.S.C. 3501 *et seq.*

The Agencies have issued the proposed retail IRB guidance to seek public input on the content of the guidance and information collection methods used in the guidance. The Agencies have made no determination regarding the information to be collected, if any. When the Agencies have developed a firm proposal, they will follow the standard process to seek public comment on the information collection and to obtain OMB approval.

The Agencies will use any comments received to evaluate the burden attendant to the approach set forth in the proposed retail IRB guidance. Comments on the collections of information should be sent to:

OCC: John Ference or Camille Dixon, OCC Clearance Officer, Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 8–4, Attention: 1557–IRBG, Washington, DC 20219. Comments also may be sent by electronic mail to *camille.dixon@occ.treas.gov.*

Board: Cindy Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Mail Stop 41, Washington, DC 20551. Comments also may be sent by electronic mail to *regs.comments@federalreserve.gov.*

FDIC: Leneta Gregorie, Counsel, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments also may be sent by electronic mail to *comments@fdic.gov.*

OTS: Marilyn K. Burton, OTS Clearance Officer, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments also may be sent by electronic mail to *infocollection.comments@ots.treas.gov.*

The text of the proposed IRB retail guidance document follows:

Proposed Supervisory Guidance on Internal Ratings-Based Systems for Retail Credit Risk

Table of Contents

I. Introduction

A. Background

1. This document provides supervisory guidance for banks, thrifts, and bank holding companies that adopt the advanced internal-ratings-based (''IRB'') approach for determining regulatory risk-based capital requirements for retail exposures (''banks'').[4] As described in the preamble to the **Federal Register** publication of this guidance, this document reflects the current views of the Federal banking agencies (''agencies'') and is subject to change based on comments submitted by the banking industry and other interested parties, further analysis by the agencies, results of the fourth quantitative impact study, and technological advances in the risk measurement and management disciplines. This retail guidance includes some supervisory standards that ultimately may become part of the minimum IRB qualifying requirements that would be proposed as part of the notice of proposed rulemaking (''NPR'') that the agencies intend to issue for public comment in 2005 to comprehensively implement the IRB approach. It was necessary to include these standards in this proposed guidance document in order to provide banks with coherent and comprehensive guidance as to the current views of the agencies on the elements of a retail IRB risk management infrastructure.

2. A central objective of the IRB framework is to enhance the risk sensitivity of the minimum regulatory capital requirements. Under the retail IRB approach, banks assign risk parameters to pools of exposures with similar risk characteristics, that is, to risk segments, rather than to individual exposures (as in the corporate portfolio). These parameters are then used for the determination of minimum regulatory capital. Supervisors will rely on banks, subject to minimum standards, to use internal risk management systems to differentiate segments of retail exposures by the credit risk they pose and to quantify the risk parameters for each segment. Adequate data to support accurate and reliable credit risk measurements, as well as rigorous management oversight and controls, including continual monitoring and

[4] Throughout this guidance, the term ''banks'' generally refers to banks, thrifts, and bank holding companies adopting the IRB approach.

validation, are crucial to the prudent application of the IRB capital framework.

3. This guidance, which is written for supervisors and banks, describes the components and characteristics of an IRB credit risk measurement and management framework for retail exposures. The guidance explains how to measure the risk of retail exposures, maintain data on them, segment them, and quantify each segment's risk. The guidance should help foster accountability, transparency, and oversight and control mechanisms in the IRB capital framework.

4. With these goals in mind, this guidance sets forth retail supervisory standards for an IRB credit risk system. These standards are highlighted in bold and designated by the prefix ''RS.'' To enable banks to implement the framework flexibly whenever possible, these regulatory standards typically take the form of general principles rather than specific requirements. However, when the need for uniformity outweighs the benefits of flexibility (often for reasons of prudence), the guidance provides more detailed and specific expectations. Banks would be expected to have credit risk management practices that are consistent with the substance and spirit of the standards in this guidance. Furthermore, nothing in this guidance should be interpreted as weakening, modifying, or superseding the safety and soundness principles articulated in the existing statutes, regulations, or guidance of the agencies.

5. In general, this IRB retail guidance neither dictates the precise manner by which banks should seek to meet the supervisory standards nor provides comprehensive technical guidance on how to meet the standards. This document assumes that readers are familiar with the proposed IRB approach for the calculation of minimum regulatory capital requirements in the International Convergence of Capital Measurement and Capital Standards, published by the Basel Committee on Banking Supervision in June 2004 (''Basel II'').

6. Under the retail IRB approach, banks first segment retail exposures and then quantify the risk of each segment by estimating each segment's probability of default (PD), loss given default (LGD), and exposure at default (EAD). Consistent with many retail lenders' internal risk management practices, a bank may also choose to indirectly obtain an estimate of PD by first obtaining estimates of average dollar loss rates and loss severity. These quantitative estimates of risk must be consistent with those used for internal risk management purposes.

B. Scope of Retail Guidance

7. For the purposes of this guidance, the terms ''retail exposure'' and ''retail loan'' are intended to include retail leases as well as loans.

8. When the terms ''models'' and ''models-based'' are used in this guidance, they refer to banks'' use of various types of statistical modeling techniques solely for the purpose of estimating the risk parameters PD, LGD, and EAD for IRB retail segments.

9. The agencies expect that this guidance and the standards set forth below would apply to most retail exposures of banks. Although banks can designate some retail exposures as nonmaterial and, thus, not subject to the retail IRB approach, the aggregate amount of these nonmaterial retail exposures must be small as a percentage of the bank's total retail exposures, and the aggregate amount of credit risk in the nonmaterial retail portfolios must be a small percentage of the bank's total amount of retail exposure credit risk. A bank must maintain adequate documentation to support its nonmaterial determinations. Subject to supervisory review, banks will determine minimum capital requirements for a nonmaterial retail portfolio according to the risk-based capital standards for non-IRB banks.

10. Some banking organizations have retail portfolios that are centrally managed, even though the exposures are held by multiple legal entities. Certain activities, including segmentation and quantification, can be conducted across multiple legal entities within the United States, subject to limitations discussed in chapter III and chapter V. However, each legal entity subject to IRB capital requirements must document its minimum regulatory capital requirements on a standalone basis and hold its own separate minimum regulatory capital in proportion to the risk exposure of its portfolios. Specifically, the PD, LGD, and EAD estimates used to determine minimum regulatory capital levels must be applied to exposures at the segment level, and capital requirements for each relevant legal entity should be based on the proportionate share of each segment owned by such legal entity. Furthermore, the board of directors of each such legal entity must ensure that capital calculations accurately reflect the risk profile of their individual banks.

11. While the general principles of retail segmentation, quantification, and data maintenance will apply to all portfolios, special issues may arise in the case of portfolios outside the United States. Cross-border issues for retail and other portfolios will be addressed in future documents.

C. Definition of Retail Exposures

12. An exposure is a retail exposure for IRB purposes if both of the following conditions are met:

- The exposure is managed as part of a pool of similar exposures rather than as an individual exposure; and
- With the exception of small business loans (see below), the obligor is an individual.

13. Within this general definition, there are three retail risk categories, each with specific qualifying criteria:

- *Residential mortgage loans* secured by one- to four-family residential properties. Includes first and subsequent liens, term loans, lines of credit, and legally binding commitments to lend. This includes business loans if the loans are primarily secured by one- to four-family residential properties. No limit on the size of the exposure.
- *Qualifying revolving exposures (QREs)* whose outstanding amount fluctuates, determined largely by the borrower's decisions to borrow and repay, up to a pre-established limit. Must be revolving, unsecured, and unconditionally cancelable by the bank; maximum exposure, $100,000. Includes most credit cards to individuals (but not those issued on behalf of a business) and overdraft lines on individual checking accounts. Also included are overdraft protection programs, commonly referred to bounced-check protection programs, that advise customers of an amount up to which overdrafts may be paid.[5] To qualify for QRE status, a sub-portfolio must display low volatility of loss rates relative to its average level of loss rates.
- *Other retail—general and small business. ''General''* applies to all retail exposures to individuals that do not fall into either of the two previous categories or into the ''small business'' category described immediately below. No limit on size of exposure. *''Small business''* applies to small loans of any kind to individuals or companies for business purposes. However, if a small business loan is primarily secured by 1–4 family residential property, it should

[5] This sentence is intended to capture bounced-check protection programs and reflects the reporting and capital standards proposed in the draft Interagency Guidance on Overdraft Protection Programs that was published for comment in the **Federal Register** on June 7, 2004 (69 FR 31858). However, it should be noted that once the Interagency Guidance on Overdraft Protection Programs is finalized, this draft guidance may be amended to reflect changes in that guidance.

be included in the residential mortgage category above. For small business loans, total exposure to a single borrower is limited to $1 million, on a fully consolidated basis, although supervisors may allow amounts slightly above the limit.

14. Private banking exposures must meet the requirements stated above, including the requirement that they must be managed as part of a pool of similar exposures, to be considered under retail IRB. Otherwise, they would fall under corporate IRB.

15. Each of the three retail risk categories has a separate risk-weight function. These functions differ from one another only by the supervisor-specified asset value correlation. The unexpected loss capital requirement (K) per dollar of EAD for each retail segment of non-defaulted assets is calculated using the following general formula:

$$K = \left[LGD \times N\left(\frac{N^{-1}(PD) + \sqrt{R \times N^{-1}(0.999)}}{\sqrt{1-R}} \right) - (LGD \times PD) \right]$$

where N is the cumulative standard normal distribution, N^{-1} is the inverse cumulative standard normal distribution, R is the asset value correlation, and 0.999 is the ''solvency standard'' chosen by the supervisors.[6] For residential mortgages, R is specified as 0.15, for qualifying revolving exposures, R is specified as 0.04, and for other retail exposures, R varies between 0.03 and 0.16, based on the following formula:

$$R = 0.03 \times \left(1 - e^{-35 \times PD}\right) + 0.16 \times \left(e^{-35 \times PD}\right)$$

16. Minimum capital requirements for defaulted retail exposures are determined separately. See chapter III for a detailed discussion.

17. Risk-weighted assets (RWA) for each segment are calculated as $12.5 \times K \times EAD$.

18. The expected dollar loss on a segment (EL) is defined as $PD \times LGD \times EAD$. The overall level of expected losses in the retail and certain other portfolios is used in the calculation of a regulatory capital adjustment.

D. Quantifying Retail Exposure Credit Risk

19. There are two distinct phases in the process of determining the minimum regulatory capital requirements for the credit risk of retail exposures. In the first phase, credit risk segmentation, a bank assigns every individual retail exposure to a segment or pool with homogeneous risk characteristics. These characteristics, often referred to as ''primary risk drivers'' (such as loan-to-value ratios and credit scores), are reliable predictors of loan performance over time that allow banks to effectively sort exposures into homogeneous segments. To segment risk in this way, bankers must have a thorough understanding of how a retail exposure's risk drivers affect the risk parameters (PD, LGD, and EAD).

20. In the second phase, quantification, a bank statistically estimates the three risk parameters, PD, LGD, and EAD, for each retail segment. Historical data are used to create ''reference segments'' whose subsequent credit performance has been observed and included in the data set. The central assumption of this phase is that the estimated relationship between the particular set of risk drivers and the credit performance of the reference segments will hold for the segments that make up the existing portfolio. Once the risk parameters are quantified for existing retail exposure segments, the bank then calculates the minimum regulatory capital requirements based on the appropriate IRB formulas.

21. Each phase has its own validation challenges. In phase one, the bank must determine whether the assignment of retail exposures to segments effectively separates exposures by characteristics that remain significant drivers of risk over time. In phase two, the bank must determine whether the risk parameter estimates are accurate and representative of the risk in the existing portfolio.

22. A robust and detailed data maintenance system should support implementation of the IRB segmentation and quantification process as well as their dynamic development. Management oversight and control mechanisms over the entire IRB retail credit risk system (including segmentation, quantification, and supporting data maintenance) should ensure conservative, verifiable, and accurate estimates of the segment-level credit risk parameters.

23. In summary, IRB banks will be expected to construct and maintain a retail credit system comprising four interdependent components corresponding to the four chapters of this guidance. The four chapters are organized as follows: chapter II, ''Segmentation''; chapter III, ''Quantification''; chapter IV, ''Data Maintenance''; and chapter V, ''Control and Oversight Mechanisms.''

E. Supervisory Expectations

24. Taken together, segmentation, quantification, data maintenance, and control and oversight mechanisms provide a framework for defining and improving evaluation of retail credit risk and determining minimum regulatory capital. Supervisors expect that banks will continue to refine their credit risk systems using regular reviews and updates.

25. All aspects of the risk segmentation system and the quantification processes must be subject to thorough, independent, and well-documented validation. Banks should use a variety of validation approaches; no single approach can conclusively validate the risk segmentation and quantification methods. Three broad types of useful tools include evaluating the developmental evidence or logic of the system; ongoing monitoring of system implementation and reasonableness (verification and benchmarking); and comparing realized outcomes with predictions (back-testing).

26. A rigorous framework of control and oversight mechanisms must govern the entire IRB implementation. The framework must be characterized by independence, transparency, and accountability; must ensure that the IRB implementation standards discussed in this guidance are met; and must ensure that related bank policies are followed. The control and oversight mechanisms must also include independent technical validation of all quantitative aspects of the risk segmentation and quantification systems.

27. For IRB systems to work successfully, they need the active

[6] That is, minimum regulatory capital for covering unexpected losses, K, is set to equal the estimated level of unexpected losses corresponding to the 99.9th percentile of the loss distribution for the bank's credit portfolios.

support and oversight of the board of directors and senior management to ensure that the various components fit together seamlessly and that incentives are in place to extend the system rigorously across business line, risk management, and other control groups.

28. The proposed regulatory minimum capital requirements are predicated on a bank's internal systems being sufficiently advanced to allow a full and accurate assessment of its risk exposure. The IRB framework demands more rigorous validation work and controls than supervisors have required in the past. When properly implemented, the new framework will better align minimum capital requirements with risk.

29. Supervisors will evaluate compliance with the four components of a retail IRB system and how well the various components of a bank's retail IRB system complement and reinforce one another to achieve the overall objective of accurately determining minimum required regulatory capital for retail exposures. In performing their evaluation, supervisors will exercise considerable supervisory judgment in evaluating both the individual components and the overall IRB framework.

II. Retail Risk Segmentation Systems for IRB

A. Overview

30. This chapter describes the design and operation of a qualifying retail risk segmentation system. IRB retail risk segments are pools of exposures within the three retail risk categories that contain exposures with similar risk characteristics.

31. The retail IRB framework is intended to provide banks with substantial flexibility to use the retail portfolio segmentation they believe is most appropriate for their activities, subject to the following broad standards:

- The goal of segmentation is to provide meaningful differentiation of risk, with each pool composed of exposures with homogeneous risk characteristics Accordingly, in developing the risk segmentation system, banks should consider the chosen risk drivers' ability to separate risk consistently over time and the overall robustness of the bank's approach to segmentation.
- Segmentation must use relevant borrower risk characteristics (such as credit score, delinquency, or debt-to-income ratio) and loan-related risk characteristics (such as loan-to-value or product type) that reliably differentiate a segment's risk from that of other segments and that perform consistently over time.
- Risk drivers for segmentation should be consistent with the predominant risk characteristics used by the bank for internal credit risk measurement and management.
- The segmentation system should generate pools that separate exposures by realized performance. It should be designed so that actual long-run outcomes closely approximate the retail IRB risk parameters estimated by the bank.
- In general, segments should not cross national jurisdictions.
- IRB banks must have ongoing validation processes for risk segmentation systems that include the evaluation of developmental evidence or logic of the system, ongoing monitoring, and back-testing. Validation for the risk segmentation system is ultimately tied to validation of the bank's quantification of IRB risk parameters. This aspect of validation is discussed in chapter III.

32. The IRB retail risk parameter estimates that determine minimum required capital are assigned at the segment level.

B. Criteria for Retail Segmentation

RS–1: Banks must segment exposures into pools with homogeneous risk characteristics. Banks must separately segment exposures in each distinct product line within each of the three retail risk categories (mortgage, QRE, and other).

33. Examples of acceptable approaches to segmentation include:

- Banks may segment exposures by common risk drivers that are deemed relevant and material in determining the loss characteristics of a particular retail product. For example, a bank may segment mortgage loans by LTV band, age from origination, geography, origination channel, and credit score. Statistical modeling, expert judgment, or some combination of the two may determine the most relevant risk drivers.
- Alternatively, banks could segment by grouping loans with similar loss characteristics, such as similar average loss rates or similar PDs. (Those loss parameters would be estimated in accordance with the techniques outlined in chapter III.)

34. While banks have considerable flexibility in determining IRB retail risk segments, they should consider factors affecting both borrower risk characteristics (such as credit score) and loan-related risk characteristics (such as LTV) when determining segmentation criteria.

35. Each retail risk segment will typically be associated with a separate PD, LGD, and EAD. In some cases, it may be reasonable to use the same LGD estimate for multiple segments. In such cases, the bank must demonstrate that there are no material differences in LGD among those segments. Over time, supervisors expect banks to develop more precise data and methodologies for determining LGDs.

36. There may be situations in which data for certain retail loans are missing or incomplete, such as data for purchased loans or loans originated as policy exceptions. The overall segmentation system should adequately consider the risk associated with these loans based on data availability. In some cases, missing or incomplete data by itself may be a significant risk factor for segmentation purposes.

RS–2: Defaulted assets must be segmented on the basis of risk characteristics predictive of loss and recovery rates.

37. The IRB capital calculation for defaulted assets requires banks to provide a ''best estimate'' of the losses on these loans. (See chapter III for details.) Since, by definition, defaulted assets have PDs equal to 1, these best estimates of losses will depend solely on banks' estimates of losses given current conditions. To produce these best estimates, banks must segment defaulted assets separately from non-defaulted assets, and base the segmentation on those characteristics that are most predictive of current loss and recovery rates. This segmentation should provide meaningful differentiation so that individual loans within each defaulted segment do not have material differences in their expected loss severity.

RS–3: A retail IRB risk segmentation system must produce segments within each retail risk category that adequately differentiate risk and produce reliable estimates of the IRB risk parameters.

38. A bank must support the degree of granularity in its segmentation system and the distribution of exposures across segments. Granularity refers to how finely the portfolio is segmented into differentiated risk pools.

39. Banks have considerable flexibility in determining the granularity of their risk segmentation. Each bank must perform its own internal analysis to determine the appropriate degree of granularity in order to achieve the goal of producing homogeneous risk segments. For example, a bank using credit score ranges to segment its portfolio must provide the rationale for the ranges chosen.

40. A concentration of exposures in a segment (or segments) does not, by itself, reflect a deficiency in the segmentation system. For example, a bank may lend within a narrow risk band and, therefore, have a smaller number of risk segments than a bank that lends across a wider range of risk bands. However, a bank with a high concentration of exposures in a particular risk segment will be expected to document that the bank's segmentation criteria are carefully delineated and well documented. The bank should be able to demonstrate that there is little risk differentiation among the exposures within the segment, and that the segmentation method produces reliable estimates of IRB risk parameters.

RS–4: Banks must clearly define and document the criteria for assigning an exposure to a particular retail risk segment. The risk factors used for IRB risk segmentation purposes must be consistent with internal methods of assessing credit risk for retail exposures.

41. The method of risk segmentation will help determine the risk parameters as well as which techniques should be used for validation and which control mechanisms will best ensure the integrity of the risk segmentation system. To assist the discussion of segmentation requirements, described below are some alternative techniques for determining appropriate segmentation.

• Banks may incorporate results of statistical underwriting models or scoring models directly into their risk segmentation process. For example, a bank may use a custom or bureau credit score as a segmenting criterion. In that case, the bank must validate the choice of the score, as well as demonstrate that its credit scoring system has adequate controls.

• Banks may incorporate the variables from a statistical model into their risk segmentation processes. For example, a bank that uses a statistical model to predict losses for its mortgage portfolio could select some or all of the major inputs to that model, such as debt-to-income and LTV, as segmentation criteria. As part of its validation and controls for the IRB segmentation system, the bank must provide an appropriate rationale and empirical evidence for its choice of the particular set of risk drivers from the loss prediction model.

• Banks may combine expert judgment with statistical analysis in determining appropriate segmentation criteria. However, expert judgment of this type must be well documented and supported by empirical evidence demonstrating that the chosen risk factors are reliable predictors of risk.

42. A bank must be able to demonstrate a strong relationship between IRB risk drivers and comparable measures used for credit risk management. Specifically, a bank should demonstrate that the IRB segmentation system differentiates credit risk across the portfolio and captures changes in the level and direction of credit risk that are similar to measures used in credit risk management. For example, even if a bank uses custom scores for underwriting or account management, generic bureau scores may be used for IRB segmentation purposes if the bank can demonstrate a strong correlation between these measures.

C. Retail Risk Segmentation Architecture

Migration of Exposures Between Retail Segments

RS–5: Banks must develop and document their policies to ensure that risk driver information is sufficiently accurate and timely to track changes in underlying credit quality and to migrate exposures between segments.

43. Under the IRB framework, a bank initially assigns retail exposures to segments based on the information about their risk drivers available at the time of origination or acquisition. The bank must then continue to monitor the risk characteristics of the exposures and migrate exposures to new segments, as necessary, based on refreshed information gathered by the bank as part of its monitoring process.

44. Banks must choose risk drivers that accurately reflect the risk of an exposure. Risk drivers selected should be consistent with risk measures used for credit risk management.

45. In accordance with industry practices in retail credit risk management, a bank must have a well-documented policy on monitoring and updating information on exposure risk characteristics and on migrating exposures between segments. The policy should specify the risk characteristics to be updated and the frequency of updates for each product type or sub-portfolio within its retail portfolio. Updating of relevant information on these risk drivers must be consistent with sound risk management.

46. Decisions regarding frequency of obtaining refreshed information should reflect the specific risk characteristics of individual segments and/or the materiality of the potential impact on capital. The frequency of updates and of migration will generally differ for different risk drivers and for different products. The underlying principle is that, in every period, retail exposures are assigned to segments that accurately reflect their risk profile and produce accurate IRB risk parameters.

47. Banks are expected to assess their approach to updating information and migrating exposures as part of the validation of the segmentation process.

Frequency of Changes to the Segmentation System

RS–6: Banks must review their segmentation system at least annually and have clear policies to define the criteria for modifying the system.

48. Banks must review their segmentation system to ensure that it maintains adequate risk separation. Changes in the segmentation system should be documented and supported to ensure consistency and obtain historically comparable measurements.

Segmentation and the Recognition of the Risk Mitigation Benefits of Guarantees and Insurance

RS–7: Banks that design their risk segmentation systems to realize the benefits of guarantees or other risk mitigants must be able to support their approach.

49. Retail exposures may have guarantees or insurance, such as private mortgage insurance (PMI) and government guarantees for residential mortgages. (See chapter III for a more detailed discussion of PMI.) A bank's risk segmentation system may reflect such guarantees, as may its risk parameter estimates. For example, loans with similar risk characteristics, including the same type of guarantee, could be pooled together.

D. Validation Process

RS–8: Banks must validate that their retail IRB risk segmentation process separates exposures into segments with homogeneous risk characteristics that generate reliable long-run estimates of the IRB risk parameters.

50. Banks must ensure that the actual performance of their segments is consistent with the expectations underlying the assignment of exposures to segments as set forth in their documentation. Over time, performance data should validate the manner in which the bank differentiated the portfolio by segment, and the actual loss characteristics of each segment should be consistent with its estimated IRB risk parameters.

RS–9: The ongoing validation process must include the review of

developmental evidence, ongoing monitoring, and back-testing.

51. The ongoing process to confirm and ensure the performance of the segmentation system consists of:

- The evaluation of developmental evidence;
- Ongoing monitoring of system implementation and reasonableness; and
- Back-testing (comparing actual to predicted outcomes).

52. IRB banks are expected to employ all of the components of this process. However, back-testing of segmentation may be difficult if a bank's process for modeling risks is evolving significantly. Therefore, banks may at times need to rely more heavily on developmental evidence and quality control tests to assure themselves and other interested parties that their segmentation systems are sufficiently accurate.

Segmentation Systems' Developmental Evidence

53. Developmental evidence helps determine whether the segmentation system can be expected to differentiate effectively between pools of exposures by the credit risk they pose. To evaluate developmental evidence, experts make a reasonable assessment of the quality of the segmentation system by analyzing its design and construction.

- For example, developmental evidence in support of statistical techniques used in the segmentation process, such as scoring models or underwriting models, must include documentation and discussion of their logical foundations and an analysis of the statistical model-building techniques.
- The developmental evidence will be more persuasive when it includes empirical evidence of how well the segmentation system has differentiated pools of exposures in the past, including evidence that it worked effectively outside the development sample.
- Empirical developmental evidence of a segmentation system would also include evidence of how the system compares with other systems. These other systems could include other internal segmentation systems as well as external systems whose performance can be charted against industry benchmarks.

Ongoing Monitoring

54. The second source of analytical support for the validity of a bank's risk segmentation system is the ongoing analysis to confirm that the system continues to group loans into pools with similar loss characteristics. The bank must develop a monitoring process to evaluate its system's ability to segment by risk and to apply this process consistently over time. The bank must document its approach to monitoring and the results of this analysis. The bank must also generate reports to senior management on the functioning of the segmentation system.

55. Specific verification activities will depend on the segmentation approach. For retail lending, statistical models will be an important part of the segmentation process, and the bank must verify that the data used by these models are accurate and complete.

Back-Testing of the Segmentation System

RS–10: Banks must establish internal tolerance limits for differences between expected and realized outcomes that require appropriate managerial review.

56. Back-testing is comparing realized outcomes with each segment's expected performance. For retail IRB systems, back-testing is a means of assessing whether the bank's method of segmentation and its techniques for estimating IRB risk parameters combined to work effectively. Accordingly, back-testing is a conceptual bridge between the segmentation system discussed in this chapter and the quantification of the IRB risk parameters discussed in chapter III. Because these two processes are so closely linked, a more complete discussion of back-testing is deferred until chapter III.

III. Quantification of IRB Systems

A. Introduction

57. The IRB framework requires banks to assign to each segment of the retail portfolio specific numerical values for each of the three risk parameters: probability of default (PD), loss given default (LGD), and exposure at default (EAD).[7] Under the IRB framework, these numerical values are inserted into the appropriate formula (set forth in the introduction) to determine the minimum required regulatory capital for each segment.

58. Quantification is the process by which these numerical values for each retail segment are determined. The risk parameters must be estimated in a manner consistent with sound risk management practice, quantitative techniques, and supervisory standards. In addition, a bank must ensure that these estimates remain valid over time. Since quantification occurs at the segment level, it is founded on the retail risk segmentation system presented in chapter II.

59. Conceptually, the quantification process can be broken into four stages: obtaining historical reference data; using the historical reference data to estimate relationships between the risk characteristics of the borrowers and loans on the one hand and observed outcomes (such as default rate, loss severity rate, or tendency to make additional draws on credit card lines prior to default) on the other; mapping the correspondence between the reference data and the existing portfolio's data; and applying the relationship between reference data and parameters to the portfolio's data in order to generate IRB risk parameters for the bank's existing retail segments.

60. In addition, the estimated values of the risk parameters (PD, LGD, and EAD) must be independently and thoroughly validated and the results reported to senior management.

61. The chapter is organized as follows: Section A, ''Introduction,'' establishes the organizing framework for IRB quantification and develops general standards that apply to the entire process. Section B, ''Quantification of the IRB Risk Parameters,'' covers specific supervisory standards that apply to the quantification of the three risk parameters, PD, LGD, and EAD. Section C, ''Quantification: Special Cases and Applications,'' addresses a variety of special cases and applications of the retail quantification standards and procedures (for example, small business exposures, loan purchases, purchased retail receivables, and retail leases). Section D, ''Validation,'' discusses how a bank should validate the segmentation and quantification processes.

62. A number of general examples are given in the text of this chapter to aid exposition and interpretation. Some relevant implementation examples covering the four stages of the full quantification process are presented in ''Appendix A: Process Analysis Examples.'' The guidance concludes with a number of examples of technical issues specific to retail quantification in ''Appendix B: Technical Examples.''

The Four Stages of the Quantification Process

63. Stage one—obtaining reference data. The bank assembles historical data that are used to estimate the retail IRB risk parameters. The reference data must closely resemble the bank's existing portfolio. Banks must use the best historical data available for quantifying

[7] A note on units of measurement: PD and LGD are measured as rates (percentages or decimals). EAD is a dollar amount, representing estimated exposure at default. Therefore PD × LGD × EAD will represent the dollar amount of expected losses (EL).

the retail IRB risk parameters. Over time, IRB banks will be expected to rely primarily on internal data for most of their retail portfolios, but supplemental external data may also be used when necessary. Banks may use more than one reference data set to improve the robustness or precision of the parameters. Reference data sets should include data on product type, borrower characteristics, and loan payment performance. Reference data for PD quantification includes some loans that later defaulted. Reference data sets for LGD and EAD quantification will consist solely of defaulted loans and the resulting recovery streams from internal historical data.

64. Important considerations in the choice and construction of a reference data set include:

- Comparability of the reference data to the existing credit portfolio, including consistency of risk segmentation criteria, underwriting standards, and definitions of default and loss.
- The appropriate inclusion of periods of portfolio stress.

65. The reference data set should also include the following:

- External factors relevant to the reference data that might affect the parameter estimates should be recorded, for example, the geographic concentration, the economic environment, and industry trends during the time period of the reference data.
- All borrower and loan characteristics that are used to estimate risk parameters must be included, as well as all variables necessary to redevelop and validate the estimation approach.
- The definition of default and methods of measuring loss that were in use at the time must be in the reference data set. The data must include collection costs, gain or loss on sale of collateral, date of default, etc.

66. When it is not possible to use consistent segmentation criteria for both the reference and existing portfolio, reasonably close proxy characteristics must be found.

67. Stage two—estimation. The bank applies analytical or statistical methods to the reference data to estimate a relationship between the borrower and loan risk characteristics embodied in the reference data and the outcomes of interest (defaults, loss severity, additional draws on unused lines prior to default). In other words, the bank uses empirical techniques to estimate the segment values of the risk parameters, PD, LGD, and EAD, as a function of the borrower and loan risk characteristics of the counterpart segment in the reference data. The risk parameter estimates may rely on relatively simple analysis of default rate or loss rate statistics from the reference data, or they may be a result of regression or other statistical estimation and classification techniques. This step may include adjustments for seasoning effects. A bank may use more than one technique to generate risk parameter estimates from the reference data if doing so improves robustness and accuracy of the estimates. If multiple estimates are generated, the bank must have a clear and consistent policy on reconciling the different estimates.

68. Stage three—mapping. The bank establishes a close correspondence between the portfolio data and the reference data. The risk segmentation criteria for the reference data set should match closely the criteria for the existing portfolio. In addition, if any other characteristics of the reference data and the existing portfolio are used to estimate the risk parameters, they should correspond closely in both data sets. For many retail portfolios, mapping will be a relatively mechanical process for banks using quantitative criteria to segment and model risk. If the quantitative characteristics are equally valid and provide comparable measures, mapping will simply mean applying these characteristics to the existing portfolio. In some cases, mapping may be more challenging. For example, if a bank undertakes a major new effort to expand its offering of products on the Internet, and the bank has little internal data on exposures offered this way, the bank may need to augment its reference data with external data.

69. Stage four—application. The bank applies the relationship estimated for the reference data to the actual portfolio data. The ultimate aim of quantification is to generate the risk parameter estimates for each segment of retail exposures within the existing portfolio. In the application stage, the bank often simply applies the risk parameter estimates calculated for each segment of retail exposures in the reference data to the corresponding segment in the existing portfolio. If the bank incorporates multiple data sets or estimation methods for the risk parameters, or if the mapping stage required adjustment to ensure a close match of the reference data and the existing portfolio data, the application stage could be more complex.

Integration of the Four Stages

70. While the four-stage quantification described above is a useful conceptual approach, banks may satisfy supervisory standards without explicitly dividing the quantification process into four stages. In particular, the mapping and application stages may be fairly mechanical applications of the quantitative risk segmentation criteria to the existing portfolio. An example of a seamless approach to the four stages of quantification is provided in example 1 of appendix A.

71. In general, the mapping and application stages will represent relatively straightforward processes when:

- The bank relies on quantitative segmentation criteria (for example, credit score, LTV, debt-to-income ratio), and these criteria represent relatively stable risk drivers over time. For example, if a bank uses a custom credit score, the score values must represent similar risk over the relevant time period.
- There are no major new product offerings, or changes in underwriting standards or other policies that require alternative risk segmentation criteria.

72. The complexity of the mapping and application stages will depend on the availability of data and the consistency over time of factors such as product offerings and underwriting standards. For some banks or product types, it will be necessary to work through all four stages for one or more risk parameters. In those cases, a bank should use most or all of the detail, complexities, and contingencies concerning the mapping and application stages spelled out in the remainder of this chapter.

73. Finally, while the four stages of quantification can sometimes be streamlined (because a bank's data history is extensive, for example), validation should not be streamlined. Even when a bank is able to take a straightforward approach, it must use the full validation process as prescribed in the last section of this chapter.

General Standards for Sound IRB Quantification

74. Several core standards apply to all elements of the overall IRB retail quantification process; these general standards are discussed in this section. Other supervisory standards, specific to particular risk parameters, are discussed in the subsequent sections. When evaluating retail IRB quantification, supervisors will consider all of these standards, both general and specific. Particular practical approaches to retail quantification may be highly consistent with some standards and less so with others. In any particular case, an ultimate assessment relies on the judgment of supervisors to weigh the

strengths and weaknesses of a bank's chosen approach, using these supervisory standards as a guide.

RS–11: Banks must have a fully specified process covering all aspects of retail quantification. The quantification process must be fully documented and updated periodically.

75. A fully specified quantification process must describe how all four stages (data, estimation, mapping, and application) are implemented for each risk parameter. The quantification process should be periodically reviewed and updated to ensure that it incorporates new data, analytical techniques, and evolving industry practice.

76. Documentation promotes consistency and allows third parties to review and replicate the entire process. Examples of third parties that might make use of the documentation include internal reviewers of the quantification model and risk segmentation system, internal validation teams within an independent function, and bank supervisors.

77. Major decisions in the design and implementation of the quantification process should be justified and fully documented. A bank should have a well-defined policy for reviewing and updating the segmentation and quantification design. Particular attention should be given to new business lines or portfolios in which the distribution of retail exposures among segments is believed to have changed substantially. A material merger, the acquisition or sale of loans, and substantial account attrition or growth clearly raise questions about the continued applicability of the process and should trigger a review and possible updating.

78. At a minimum, the risk parameter estimates must be updated at least quarterly and more frequently if deemed necessary for accurate credit risk management. New data should be incorporated into the risk parameter estimates using a well-defined process to correctly merge data sets over time. The frequency of updates and the process for doing so must be justified and documented in bank policy.

79. The bank must ensure that the use of judgment in the design of the quantification system does not produce unduly low risk parameter estimates.

80. Aspects of the quantification process that are apt to introduce greater uncertainty and potential error include the following:

- Uncertainty when there are substantial changes in the bank's product offerings, target customer base, or underwriting standards;
- Deficiencies or gaps in available data;
- The possibility of model error; and
- Mergers or acquisitions where the MIS for the acquired assets does not match the MIS for existing assets.

81. The more uncertain the bank's estimates are as a result of any of the causes cited in the previous two paragraphs, the greater should be the margin of conservatism around those estimates, although these margins need not be added at each step.

RS–12: Quantification must be based upon the best available data for the accurate estimation of IRB risk parameters.

82. Given the bank-specific basis of assigning retail exposures to segments, over time banks are expected to regard internal data as the primary source of information for estimating IRB risk parameters. However, banks are permitted to use external data for quantification, provided a strong similarity can be demonstrated (1) between the bank's process of assigning exposures to a segment and the process used by the external data source, and (2) between the bank's internal credit risk profile for a given set of risk drivers and that of the external data.

83. The bank must have a process for vetting potential reference data, whether the data are internal or external. The vetting should assess whether the data are sufficiently accurate, sufficiently complete, and sufficiently representative of the bank's existing exposures. Furthermore, the bank must have adequate data to estimate risk parameters for all loans on the books as if they were held to maturity, even if some loans are likely to be sold or securitized before their long-term credit performance can be observed. (See Section C, RS–27 of this chapter.)

84. One objective of the IRB framework is to encourage further development of credit risk quantification techniques. Improving the quality, capture, and retention of internal data is an essential prerequisite for such advances.

85. For new products it is likely that banks will need to supplement internal data with external sources. It may also be possible to accumulate internal data through the testing of new products by offering loans to a limited number of consumers and observing the performance.

86. In the case of mergers or purchased portfolios, the data for the newly acquired segments may not be compatible with the purchasing bank's MIS. In such cases it may be necessary to gather data on borrower and loan characteristics from a combination of internal and external sources. Historical data on the purchased portfolios, if available from external sources, would allow the incorporation of borrower and loan risk characteristics data into the purchasing bank's internal database. The risk parameters can then be estimated by combining historical data from the purchased portfolio (if available) with internal reference data.

87. Differences in economic conditions between the reference data's sample period and the present period should be monitored. In addition, the bank needs to consider any changes in trend behavior by consumers or small businesses that might affect the relevance of the historical data to the present period. For example, the bank may need to monitor actual or anticipated changes in consumer behavior due to changes in bankruptcy law or other factors.

88. A well-defined and documented process should be in place to ensure that the reference data are updated as frequently as needed, as fresh data become available or as portfolio changes make necessary. All data sources, characteristics, and the overall processes governing data collection and maintenance must be fully documented, and that documentation should be readily available for review by supervisors.

RS–13: The sample period for the reference data must be at least five years and must include periods of portfolio stress.

89. In general, the bank should use all relevant historical data available, though the bank may weight some periods more heavily if it can demonstrate that the weighted data are likely to produce more accurate risk parameter estimates. Newer reference data, for example, may receive greater weight because of possible changes in bank products, underwriting standards, policies, and strategies. On the other hand, unusual recent circumstances in the bank's internal portfolio composition or in the historical period may make the recent data less applicable than the older data. If the reference data include data from beyond five years (to capture a period of stress or for other valid reasons), the reference data need not cover all of the intervening years.

90. Example: During the 2001 to 2003 period of highly elevated mortgage prepayments owing to record low interest rates, losses may have been deferred in mortgage portfolios because of readily available refinancing options. Also, losses on foreclosures during this period were limited because housing prices generally increased throughout

the United States despite a recession. A similar (though not as substantial) drop in interest rates occurred in the early 1990s. That recession, however, was characterized by a sharp drop in property values in many parts of the country. In a case like this, where the recent period has been atypical, a bank may choose to weight the older data (perhaps from external sources) more heavily than the recent data.

91. When a bank does not have sufficient historical data to encompass a period of stress for a particular portfolio, other sources of data covering stressed periods will be required. The bank may be able to select sub-samples of its internal portfolio that experienced stressed periods (for example, particular MSAs or geographic regions); see example 1 of appendix B. The bank may also use external data from industry sources.

RS–14: Mapping must be based on a robust comparison of available data elements that are common to the existing portfolio and each reference data set.

92. Sound mapping practice uses all key common elements available in the data. A mapping should be plausible and should be consistent with the risk segmentation system established by the bank. Levels and ranges of key characteristics for each segment of the existing portfolio's retail exposures should approximate the values of similar characteristics for the reference data.

93. A bank that uses multiple reference data sets should conduct a rigorous mapping process for each data set. (Some common mapping challenges are discussed in example 2, appendix B.)

94. The use of internal data for reference data purposes does not eliminate the need for a mapping requirement because changes in bank strategy (such as marketing, underwriting standards, or account management practices) or products may alter the risk characteristics or composition of the portfolio over time, even within the same pools of a risk segmentation system.

RS–15: Mappings must be reviewed regularly and updated as necessary.

95. Mappings should be reaffirmed regularly for both internal and external reference data, regardless of whether the risk segmentation criteria have undergone explicit changes during the period covered by the reference data set. Changes in borrower risk characteristics, products, and bank policies (for example, target population, underwriting standards, or collection policies) are quite typical in retail lines of business, so it is imperative that banks review all mappings regularly. When significant characteristics have been changed, added, or dropped, a new mapping must be established between the characteristics of the existing portfolio and characteristics of the reference data.

RS–16: Banks that combine estimates from internal and external data or that use multiple estimation methods must have a clear policy governing the combination process and should examine the sensitivity of the results to alternative combinations.

96. To improve the accuracy of its estimates, a bank might combine data from multiple sources and may use multiple estimation methods. The manner in which the estimates from multiple data sets or estimation methods are combined is extremely important, since different combinations will produce different parameter estimates for each segment. The bank should investigate parameter estimates' sensitivity to different ways of combining data sets or combining estimation methods. When results are highly sensitive to how data or estimates are combined, the bank should choose among the alternatives conservatively. A bank must document why it selected the combination techniques it did, and these techniques must be subject to appropriate approval and oversight by management.

RS–17: A bank must have a clear, well-documented policy for addressing the absence of significant data elements in either the reference dataset or the existing portfolio.

97. Some exposures in the reference data set and the existing portfolio will have missing data elements, some of which are important factors for measuring risk. Banks may segment these exposures separately for estimating the risk parameters. Alternatively, they may use a variety of statistical methods to impute values for the missing data points—provided these points can be sufficiently correlated to known information about the exposure. Expertise is required to judge whether such correlations can be established. Regardless of the approach and level of sophistication, the bank must have a clear and well-documented process describing how it treats missing data elements in the estimation and mapping stages.

B. Quantification of the IRB Risk Parameters

RS–18: For estimating the IRB retail risk parameters, qualifying banks must use the IRB definition of default.

98. For retail exposures, banks must use the following definition of default for IRB: A retail exposure will be considered in default for IRB purposes when any one of the following loss recognition events occurs:

- Loss recognition as embodied in the Federal Financial Institutions Examination Council (FFIEC) Uniform Retail Credit Classification and Account Management Policy. All residential mortgages and revolving credits must be recognized as defaults at 180 days past due, and all other retail loans must be recognized as defaults at 120 days past due.
- A partial or full charge-off is taken against the exposure.
- The exposure is put on non-accrual status.

99. For retail exposures (as opposed to wholesale exposures), the definition of default is applied to a particular loan rather than to the obligor. That is, default by an obligor on one obligation would not require a bank to treat all other obligations of the same obligor as defaulted.

100. In the early stages of IRB implementation, a bank's historical reference data might not fully conform to the IRB definition of default. In addition, a bank may change its policies regarding charge-offs or placing loans on non-accrual. In such cases, a bank should make conservative adjustments to reflect such discrepancies.

Quantification of Probability of Default (PD)

101. For a given segment, the PD represents an estimate of the long-run average of one-year default rates. The one-year default rate (or default frequency) is the number of accounts that default at any time within a one-year period divided by the number of accounts open at the beginning of the year. (To figure in the calculation, an account must be open at the beginning of the period.) For unseasoned loans where seasoning effects are material, upward adjustments to the PD estimates will be necessary (as described in paragraphs 109 through 112).

Data

102. A bank must have a comprehensive reference data set that maps to the existing portfolio on a segment-by-segment basis. The same comparability standards apply to both internal and external data sources. All data sources must meet the minimum five-year requirement and include a period of economic stress. See example 4, appendix B for an example of a reference data set.

Estimation

103. Estimation of PD is the process by which characteristics of the reference data are related to the default frequencies for each segment of exposures in the reference portfolio. The relevant characteristics that help to determine the PDs are referred to as ''drivers of default.'' Drivers of default might include product, loan and borrower characteristics such as loan-to-value, credit line utilization, credit score, or delinquency status. Also, a portfolio separator such as geographic region, while not a direct driver of default, might indicate separate relationships by geographic region of the PD to these drivers. These drivers could be criteria for the assignment of exposures to pools in the risk segmentation system. A statistical model developed to estimate the PD would incorporate such drivers directly into the PD estimation.

RS–19: Estimates of PD must be empirically based and must represent the average over time of segment default frequencies on an account basis. The effects of seasoning, prepayments, and attrition must be considered in the PD estimates.

104. PD estimates should capture average expected default rates for a segment given its risk characteristics. PD estimates should represent averages of default rates measured over a sufficiently long time period to provide accurate estimates. The estimation period must include periods of economic distress.

105. When estimating PDs, a bank may give equal weight to each sample period or it may weight recent data more heavily if it can demonstrate that doing so is more predictive of future default behavior.

106. If the bank calculates an average PD over time by weighting each year's segment-level PD by the number of loans or volume of outstanding balances, the estimated PD may be lower or higher than the estimated PD from an unweighted average. For example, if lending typically declines during periods of stress, this weighting will tend to lessen the impact of the stress periods on the weighted average. A bank using such an approach would be expected to empirically demonstrate that such an approach produces a more accurate estimated PD for its existing portfolio. See example 2 of appendix A for an example of the quantification of a models-based PD consistent with a long-run average.

107. Different methods of measuring and tracking exposures, defaults, and losses are common in credit risk management. Banks are required to produce an estimate equivalent to the one-year account default rate. See example 3 in appendix B.

108. Some banks may choose to derive a PD based on the average expected dollar loss rate. A bank may use this method as long as it produces an accurate PD on an account basis as defined in paragraph 101. See example 3 in appendix A.

Seasoning

109. Seasoning poses a challenge for banks quantifying the default rate for retail exposures when the default rate follows a characteristic account age profile, typically rising for the first several periods following origination and then falling. Seasoning is an issue for longer-maturity consumer products such as residential mortgages, but it may also be important for shorter-lived portfolios. In addition, accounting for seasoning is particularly significant for portfolios that are growing rapidly through new originations or for banks that systematically sell or securitize loans before they reach the peak of the seasoning curve. In both cases, banks should factor seasoning into their quantification to provide adequate capital to cover future needs.

110. For segments containing unseasoned loans, a bank should assign a higher PD estimate that reflects the annualized cumulative default rate over the segments' expected remaining life.[8] For seasoned loans, the bank should use the long-run average of one-year PDs.

111. The account age profile may be tracked by using account age as a criterion in the risk segmentation system or as a predictive variable of the PD parameter. Several methods can be used to account for seasoning in the PD estimates. See example 4 in appendix A.

112. Periods of unusual prepayments or other types of account attrition have the potential to materially alter the estimated historical default rates for some retail exposures. PD estimates must be developed in such a way that they are not distorted by periods of unusual prepayment activity or other types of account attrition in the reference data sets.

Mapping

113. Mapping is establishing a correspondence between the existing portfolio and the reference data—that is, it is identifying how the existing portfolio's product, loan, and borrower risk characteristics relate to the reference data's characteristics. Mapping enables a bank to determine how risk parameter estimates from the reference data should apply to the existing portfolio. For banks with a consistent, long-term process of risk segmentation, PD mapping may consist simply of adopting the long-run average PD estimates from the historical data. However, if the bank's internal risk segmentation has varied over time, the bank must demonstrate a discernable link between its existing segmentation system and the long-run PD estimates produced from the reference data.

114. In some business lines, products, or cross-sections of the portfolio, certain drivers of default may not be available in the risk segmentation system. Drivers are most likely to be missing as banks transition to an IRB system or when a bank acquires a portfolio. In such cases, the bank should modify its mapping process accordingly. Supervisors expect this practice to be temporary, however, and as the requisite data become available, banks should incorporate the omitted effects into the risk segmentation system.

Application

115. In the application stage, the bank applies the PD estimates to the risk segments of the existing portfolio to calculate minimum regulatory capital. This should be a relatively mechanical process for most retail portfolios.

RS–20: PD estimates for all retail segments cannot be less than 0.03 percent (3 basis points)

Quantification of Loss Given Default (LGD)

116. LGD is defined as the segment's credit-related economic losses net of discounted recoveries divided by the segment's exposure at default, all measured during a period of high credit losses for the particular portfolio (*e.g.*, mortgages, credit cards). The LGD estimation process is similar to the PD estimation process. The bank identifies a reference data set, which must include periods of portfolio stress. Once the bank obtains these data sets, it should select a technique to estimate the credit-related economic loss per dollar of exposure for all defaulted loans in each reference segment. The bank's reference data should then be mapped to the bank's existing retail segments, so that the model can be applied to generate an estimate of the LGD for each segment in the existing portfolio.

Data

117. Unlike reference data sets used for PD estimation, data sets for LGD

[8] If the bank can demonstrate that seasoning does not have a material effect on PD, the bank can use the long-run average of one-year PDs.

estimation contain only defaulted exposures.

118. In order to calculate economic loss, the reference data sets must include all relevant data for quantifying LGD. This would include the exposure at the time of default (including principal plus unpaid but capitalized interest and fees), recoveries, and material collection and workout expenses. The data should contain the circumstances of default, for example, roll to charge-off or bankruptcy leading to charge-off, if they are significant factors for LGD. Recovery data should include the income and timing of recoveries including direct payments from the consumer, the sale of the collateral, or realized income from the sale of defaulted loans. For defaulted loans and collateral still on the balance sheet, the estimated current market value can be used to proxy the recovery amount. Cost data comprise the material direct and indirect costs associated with workouts and collections, including the dates when the various costs were incurred.

119. The same minimum history of five years for the LGD reference data set is required, or longer to include a period of portfolio stress. Although a bank may use internal or external data, most banks will eventually be expected to collect and maintain sufficient internal data.

120. In the LGD calculation, all material credit-related losses must be captured, whether or not those losses are ultimately charged to the ALLL. Material credit-related losses are broadly defined to include any material losses associated with a defaulted loan, including write-off of unpaid interest or fees, write-downs of repossessed collateral, and any similar losses.

Estimation

121. Banks must determine an accurate LGD parameter for each segment. As discussed in chapter II, banks may estimate and apply a common LGD over a range of risk segments within a particular product type, where appropriate.

RS–21: The estimates of LGD must reflect the concept of ''economic loss.''

122. For estimating LGD, the definition of loss is based on the concept of economic loss, which is a broader, more inclusive concept than accounting measures of loss. Economic loss incorporates the mark-to-market loss of value of the defaulted loan and collateral plus all direct and indirect costs of workout and collections, net of recoveries (including late fees and interest). Losses, recoveries, and costs should all be discounted to the time of default.

123. The scope of cash flows included in recoveries and costs is meant to be broad. Workout and collection costs that can be clearly attributed to certain segments of loans, plus indirect cost items, must be reflected in the bank's LGD assignments for those exposures. Recovery costs include the costs of running the bank's collection and workout departments and the cost of outsourced collection services directly attributable to recoveries during a particular time or for a particular segment of loans, at as granular a level as possible. Recovery costs also include an appropriate percentage of other ongoing costs, such as corporate overhead.

124. These recovery costs can be allocated using the same principles and techniques of cost accounting that are usually used to determine the profit and loss of activities within any large enterprise. Collection and workout departments, however, may cover services not 100 percent attributable to defaulted loans. For example, the same call center may manage reminder calls to delinquent accounts, many of which will never default, as well as collection calls. The expenses for these functions should be differentiated to allocate only collection expenses attributable to defaulted loans.

125. When costs can't be allocated because of data limitations, the bank may assign those costs using broad averages. (For example, the bank could allocate costs by outstanding dollar amounts of loans, including unpaid interest and fees at the time of default, within each segment.)

126. All losses, costs, and recoveries should be discounted to the time of default if realization of those material costs and recoveries is significantly delayed. The discount rate should be applied to the time interval between the date of default and the date of the realized loss, incurred cost, or recovery, on a pooled basis. A bank must establish a discount rate that reflects the time value of money and the opportunity cost of funds to apply to recoveries and costs. The discount rate, which should reflect the distressed nature of the asset, should usually exceed the contract interest rate for newly originated products as of the date of default. Within the retail portfolio, the discounting process will be particularly important in the case of residential mortgages because foreclosure laws in many states allow considerable time to pass between default and recovery.

RS–22: The estimated LGD must reflect loss severities during periods of high credit losses.

127. A bank must estimate an LGD for each segment that reflects economic downturn conditions where necessary to capture the relevant risks. The LGD cannot be less than the long-run default-weighted average LGD calculated on the basis of the average economic loss of all observed defaults within the data source for that retail segment. In addition, a bank must take into account the potential for the LGD to be higher than the default-weighted average during a period when credit losses for a particular portfolio (*e.g.*, mortgages) are substantially higher than average. For certain types of exposures, loss severities may not exhibit such cyclical variability, and LGD estimates may not differ materially (or possibly at all) from the long-run default-weighted average. However, for other exposures, this cyclical variability in loss severities may be significant, and banks will need to incorporate it into their LGD estimates. For this purpose, banks may use averages of loss severities observed during periods of high credit losses for that product, forecasts based on appropriately conservative assumptions, or other similar methods.

128. The LGD of an asset does not change with its actual default. The assigned LGD should already reflect a default loss experience predicated on a period of high credit losses. However, once an asset actually defaults, the bank must construct its best estimate of expected losses for it based on current economic circumstances and risk characteristics. For this purpose, banks can group defaulted loans into segments. (See chapter II.) The amount, if any, by which the LGD on the defaulted asset segment exceeds the bank's best estimate of the current expected loss rate on the segment represents the capital requirement (K) for that segment. The agencies are considering the possible establishment of an appropriate capital requirement floor for defaulted assets. When the best estimate of expected loss on a defaulted asset is less than the sum of specific provisions and partial charge-offs, that asset will attract supervisory scrutiny and must be justified by the bank.

129. Examples 5, 6, and 7 in appendix B present some issues related to LGD estimation.

Mapping

130. LGD mapping follows the same general standards as PD mapping. The default and loss definitions and loss severity risk drivers in the reference data and the existing portfolio of retail exposures must be comparable. Some common challenges in mapping are presented in example 2, appendix B.

The mapping process must be updated regularly, well documented, and independently reviewed.

Application

131. At the application stage, banks apply the LGD estimation framework to their existing portfolio of exposures. Doing so might require banks to aggregate individual segment-level LGD estimates into broader averages or to combine estimates.

132. LGD may be particularly sensitive to changes in the way banks manage retail credits. For example, a change in policy regarding collection practices or loan sales may have a significant impact on the quantification of LGD. When such changes take place, the bank should consider them in all steps of the quantification process. If a bank's policy changes seem likely to reduce LGD, estimates should be reduced only after the bank accumulates a significant amount of actual experience under the new policy to support the reductions; on the other hand, policy changes that are likely to increase LGD should be reflected in the estimates in a timely fashion.

RS–23: IRB banks have a minimum LGD of 10 percent for residential mortgages.

133. This floor is based on the view that LGDs, if appropriately estimated, are unlikely to fall below this level during periods of high credit losses. During the initial two-year implementation period of the IRB framework, the LGDs for retail residential mortgages cannot be set below 10 percent. During this transition period, the agencies will review the potential need for continuation of this floor. Mortgages guaranteed by a sovereign government are exempt from this floor.[9]

RS–24: If banks choose to reflect the risk-mitigating effect of private mortgage insurance (PMI) for residential mortgages in their risk estimates, they must do so by incorporating these insurance benefits into the quantification of segment-level LGD.

134. In calculating losses for LGD estimation, the amount of expected PMI benefits would be deducted from the losses otherwise incurred by the bank on defaulted mortgages.

135. Banks may choose to incorporate loan-level PMI coverage into their risk segmentation. For example, loans with similar risk characteristics, including the same type of PMI coverage, could be placed in a single segment. In any case, banks will need accurate PMI coverage data in both the reference and existing-portfolio data sets. This would generally require loan-by-loan tracking of PMI over the life of the loan, since loans on which the lender requires PMI coverage at origination (generally because of LTVs greater than 80 percent) often drop coverage when current LTV falls below 80 percent. Pool-level mortgage insurance is treated under the IRB securitization framework or under the general IRB credit risk mitigation rules.

136. Banks with substantial PMI-covered residential mortgages should monitor the senior unsecured debt ratings of the PMI companies. If the rating of any PMI company falls below AA, banks should accordingly adjust the LGD to take into account the elevated counterparty risk for all mortgages insured by that company.

Quantification of Exposure at Default (EAD)

Introduction

RS–25: The bank must provide an estimate of EAD for each segment in its retail portfolio.

137. For an individual retail exposure, EAD is the gross amount due at default, which is the amount by which regulatory capital would be reduced if the exposure were to be fully written off. This includes all accrued, but unpaid, interest and fees. EAD for defaulted assets includes any partial write-offs that have already been incurred. EAD for a segment is the sum of the EADs of all the loans in the segment. For fixed exposures such as term loans and installment loans, each loan's EAD is no less than the principal balance outstanding.[10] For revolving exposures and other lines of credit such as credit cards, overdrafts on checking accounts, and home equity lines of credit, each loan's EAD includes the outstanding balance plus estimated net additions to balances for loans defaulting over the following year. These additions consist of future principal increases including capitalized future interest and fees.

138. For purchased loans, the EAD is set equal to the purchase price. For example, if a bank buys a retail portfolio consisting of exposures with $100 million face value at a 5 percent discount, the initial EAD for the purchasing bank is $95 million. (Example 8 in appendix B illustrates the effect of the purchase discount on EAD and LGD.)

139. To estimate the net additional draws, many banks estimate a loan equivalent exposure (LEQ) as the percentage of the total authorized but undrawn lines expected to be drawn down by borrowers that default. Thus, the estimated dollar value of the additional drawdown before default can be represented as:

Net additional draws =

LEQ * (total authorized line − present outstanding balance)

EAD for the segment can then be represented as:

EAD = Present outstandings + Net additional draws

It is the LEQ that must be estimated, since the total authorized line and the amount presently outstanding are known. The estimation of the LEQ is the focus of this section of the guidance.

140. A bank quantifies its EAD by working through the four stages of quantification: the bank must develop a reference data set; it must estimate an EAD for segments in the reference data set with a given array of characteristics; it must map its existing portfolio to the reference data; and by applying the mapping, it must generate an EAD estimate for each segment in the existing portfolio.

Data

141. In order to estimate LEQ for an entire segment, EAD reference data sets contain only defaulted loans. In many cases, the same reference data may be used for both LGD and EAD. In addition to relevant descriptive characteristics that can be used in estimation, the reference data must include historical information on drawn and undrawn exposures prior to default, as well as the drawn exposure at the date of default.

142. As discussed below under ''Estimation,'' LEQ estimates of potential draws may be developed using either a cohort method or a fixed-horizon method. The bank's reference data set should be structured so that it is consistent with the estimation method that the bank applies.

Estimation

143. To derive LEQ estimates for each segment, characteristics of the reference data are related to additional drawings preceding a default event. The estimation process should be capable of producing an average estimate of draws on unused lines to support the EAD calculation for each segment. Two broad types of estimation methods are used in practice: the cohort method and the fixed-horizon method. Regardless of the method used, the LEQ estimates must accurately capture the potential exposure to losses from loans defaulting over the coming year.

[9] This exemption applies to VA-guaranteed and FHA-insured mortgages.

[10] For all loans, the LGD calculation includes all unpaid interest and fees in the measure of economic loss.

144. Under the cohort method, a bank groups defaults into discrete calendar periods, typically one year. A bank may use a longer period if it provides a more accurate estimate of total future losses arising from undrawn exposures. The bank then estimates the relationship between the balances for defaulted loans at the start of the calendar period and the balances at the time of default.

145. Under the fixed-horizon method, the bank bases its estimates on a reference data set that supplies the actual exposure at default for each defaulted loan along with the drawn and undrawn amounts at a fixed interval prior to default. Estimates of LEQ are computed from the increase in balances that occur over the fixed-horizon interval for the defaults in the segment. The time interval used for the fixed-horizon method must be sufficiently long to capture the additional exposures generated by loans that default during the year for which the risk parameters are being estimated. In particular, the appropriate fixed interval will be influenced by charge-off policies. For example, using a six-month time interval for credit card loans would underestimate EAD.

RS–26: The estimated LEQ must reflect estimated net additional draws during periods of high credit losses.

146. The LEQ cannot be less than the long-run default-weighted average for that retail segment. The LEQ must reflect net additional draws observed during periods of high credit losses if these are systematically higher than the default-weighted average. For this purpose, banks may use averages of LEQs observed during periods of high credit losses for that product, forecasts based on appropriately conservative assumptions, or other similar methods.

Mapping

147. If the characteristics that drive EAD in the reference data are the same as those used for the risk segmentation system of the bank's existing retail portfolio, mapping may be relatively straightforward. However, if the relevant characteristics are not available in a bank's existing portfolio risk segmentation system, the bank will encounter the same mapping complexities that it does when mapping PD and LGD in similar circumstances.

Application

148. In the application stage, the estimated relationship between risk drivers and LEQ is applied to the bank's existing portfolio. With the exception of portfolios purchased at a discount, the estimated EAD must be at least as large as the currently drawn amount in each segment; therefore, LEQs cannot be negative. Multiple reference data sets may be used for LEQ estimation and combined at the application stage, subject to the general standards for using multiple data sets.

149. EAD may be particularly sensitive to changes in the way banks manage retail credits. For example, a change in policy regarding line increases or decreases for particular segments may have a significant impact on LEQ. When such changes take place, the bank should consider them when making its estimates—and it should do so from a conservative point of view. Policy changes likely to significantly increase LEQ should prompt immediate increases in LEQ estimates. If a bank's policy changes seem likely to reduce LEQ, estimates should be reduced only after the bank accumulates a significant amount of actual experience under the new policy to support the reductions.

C. Quantification: Special Cases and Applications

Small Business Exposures

150. Certain exposures to a company or to an individual for business purposes can be included in the ''other retail'' category for IRB purposes provided they meet the following conditions:

- A small business loan must be managed by the bank on a segmented basis, where credit scoring is often a key component of the underwriting decision process, and the bank must estimate risk parameters for segments of such loans with similar risk characteristics. (If the small business exposures are rated and managed as individual exposures, they will fall under the corporate standards and requirements.)
- The total of all of the bank's exposures to a single business (whether in the name of the business or in the name(s) of the proprietor(s) for business purposes) cannot exceed $1 million.
- Revolving exposures to an individual can be treated as QREs, even if used for business purposes. However, revolving exposures to businesses will be treated as ''other retail'' if they meet the criteria above.

151. Small business exposures qualifying for retail treatment are subject to all the standards applicable to other retail exposures.

Retail Leases

152. The minimum capital requirement for retail leases is the sum of (1) the credit risk capital requirement on the discounted lease payment stream plus (2) 8% of the residual value of the leased asset:

- The lease payment credit risk is determined by estimating PD and LGD in the same manner as retail loan exposures; EAD equals the discounted remaining lease payment stream.
- The risk of the residual value is the bank's exposure to loss arising from potential decline in the fair value of the leased asset below the estimate at the time of lease inception.

Purchased Retail Receivables

153. Purchased retail receivables are treated the same as other categories of retail exposures, except for the effects of dilution. Dilution effects refer to the potential reduction in receivable balances caused by cash or non-cash credits granted to the receivables' obligor(s). Examples include offsets for the return of goods sold and discounts given for prompt payment. If dilution poses a material risk, banks should estimate an expected (long-run average) one-year dilution rate (as a percentage of the receivables amount.) The minimum regulatory capital requirement for dilution risk is determined according to the corporate risk weight formula.

154. When refundable purchase price discounts, collateral, or partial guarantees provide first dollar loss protection for purchased retail receivables, banks may treat these as first dollar loss protection under the IRB securitization framework and use that framework for the calculation of minimum capital requirements for the purchased retail receivables. Alternatively, the bank may choose to treat EAD as the purchase price.

Loan Sales

RS–27: Quantification of the IRB risk parameters must be adjusted appropriately to recognize the risk characteristics of exposures that were removed from reference data sets through loan sales or securitizations.

155. Banks must estimate the risk parameters for all loans on the books as if they were held to maturity, even if some loans are likely to be sold or securitized before their long-term credit performance can be observed. Loan sales and securitizations, however, can pose substantial difficulties for quantification. For example, PDs might appear disproportionately low if loans are sold before their historical performance patterns become manifest. Adjusting the risk parameter estimation to correct for sales or securitization would be particularly important for a bank that sells off primarily credits that are performing poorly (for example, delinquent loans).

156. If the potential bias in the parameter estimates created by loan

sales and securitizations is material, the bank must identify, by detailed risk characteristics, the loans sold out of the pool or portfolio when using internal historical data as reference data sets for quantification purposes.

157. For banks with a history of regularly selling or securitizing loans of particular types, long-run performance data should be available from the servicers or trustees. Alternatively, banks may be able to construct appropriate reference data sets with risk characteristics comparable to the loans sold or securitized by using internal historical data from retained pools or external data.

Securitization and Undrawn Balances

158. For QREs, home equity lines of credit (HELOCs), and other retail products where the drawn balances of certain accounts in the portfolio have been securitized, the IRB risk parameters and minimum capital requirements shall be determined as follows:

- For the seller's interest in securitized receivables, the risk parameters and minimum capital requirements must be determined as stipulated in this chapter.
- The potential additions to the balances prior to default for all of the accounts with securitized balances must be determined in accordance with the section of this chapter on EAD. These additions must be allocated between the seller's (originating bank's) and investors' shares on a pro rata basis, in the same proportions as the drawn balances of the accounts.
- For the seller's interest in the undrawn balances, the risk parameters and capital requirements must be determined as stipulated in this chapter.
- For the investors' interest in the undrawn balances, minimum regulatory capital will be determined according to the IRB rules for securitizations.

Multiple Legal Entities

159. In those cases where quantification is conducted across portfolios that are held by two or more legal entities, segmentation must meet all the standards set forth in Chapter II. Exposures assigned to a single segment must share homogeneous risk characteristics, regardless of whether the exposures are held on the books of a single or multiple legal entities, to ensure that the risk parameters accurately reflect the risk of the exposures held by that entity. For example, if a particular institution within the banking group holds loans with unique or predictive characteristics (such as credit card loans originated through a specific marketing channel or mortgage loans in a certain location), the segmentation system must be designed to incorporate these characteristics to ensure that PDs, LGDs and EADs for each entity are accurately stated. The following standards also apply:

- The risk parameters for each segment are determined on a segment-wide basis in the same manner described in the preceding sections of this chapter.
- Capital requirements for each legal entity should be based on the pro-rata share of the EAD exposure for each segment that is owned by that entity.
- Periodic validation should be conducted to confirm that minimum capital requirements determined through this approach are not materially different from those that would be determined on a separate entity basis.

QRE Treatment Qualification

160. To qualify for QRE treatment, in addition to the other requirements listed in chapter I, banks must demonstrate that their revolving portfolios are characterized by low volatility of loss rates relative to average loss rates, particularly for low PD bands.

161. Specifically, $\sigma_{LR}/\bar{L}\bar{R}$ must be ''relatively low,'' where $\bar{L}\bar{R}$ is the average loss rate, and σ_{LR} is the volatility, or the standard deviation of the average loss rate over time.

162. The average loss rate and the standard deviation should be calculated over a sufficiently long time period to be representative of the performance of the portfolio over both good and stressful economic environments.

163. There is no fixed threshold for what constitutes a ''low ratio'' of σ_{LR} to $\bar{L}\bar{R}$. Banks will be expected to develop and document policies for their thresholds, and to compare ratios across portfolios that meet all the remaining qualifications for QRE treatment. In addition, they should compare the ratios to those of their other retail portfolios and their corporate and bank portfolios. Banks must retain data on their loss rates.

164. If the ratio of loss rate volatility to average loss rates is not sufficiently low, the portfolio will be subject to treatment as ''other retail'' rather than as QRE. Supervisors will review the relative volatility of loss rates across the QRE sub-portfolios, as well as the aggregate QRE portfolio, and intend to share information on the typical characteristics of QRE loss rates across jurisdictions.

Stress Testing

165. Stress-testing analysis indicates the effect of economic downturns on credit quality and the resulting effect on capital requirements. Under the new framework, changes in borrower credit quality will lead to changes in the required IRB regulatory capital charge. Since credit quality changes typically reflect changing economic conditions, required regulatory capital may also vary with the economic cycle. During an economic downturn, regulatory capital requirements could increase if exposures migrate toward lower credit quality segments as a result of higher unemployment and lower incomes.

166. Supervisors expect that banks will manage their regulatory capital position so that they remain adequately capitalized during all phases of the economic cycle. A bank that is able to credibly estimate regulatory capital levels during a downturn can be more confident of appropriately managing regulatory capital. Stress testing is one tool for that estimation, by means of projecting the levels of key performance measures in an economic downturn.

167. Stress testing is a general term that can be applied to different types of analysis, depending on the purpose of the exercise. To cite an example that differs from the type of stress testing considered here, a bank might want to shed light on how it would fare during an extreme scenario that threatens its continued existence. Still another type of stress testing evaluates the effect of an adverse scenario (such as a significant increase in unemployment) on the credit quality of a group of borrowers.

168. Banks are encouraged to use a range of scenarios when stress testing to manage regulatory capital. Scenarios may be historical, judgmental, or model-based. Key variables specified in a scenario could include interest rates, score-band segment transition matrices, asset values, growth rates, and unemployment rates. A bank may choose to have a single scenario that applies to the entire portfolio, or it may identify scenarios specific to the various portfolio segments. The severity of the stress scenario should be consistent with the periodic economic downturns experienced in the United States. Such scenarios may be less severe than those used for other purposes, such as testing a bank's solvency.

169. Given a scenario, a bank then estimates the effect of the scenario on risk-weighted assets and its future capital ratios relative to the regulatory minimums. Estimating capital ratios includes estimating levels of capital (the numerator of the ratio) as well as measures of risk-weighted assets (the denominator). Suppose the scenario for a large retail portfolio segment is a specific historical recession (for

example, the national unemployment rates of 1980 to 1985). Score-band transition matrices observed during the recession could be used to quantify migration between segments and thus supply the new distribution of segments expected for the current portfolio, given the scenario. This would allow the calculation of risk-weighted assets that would be expected in the recession scenario. Default rates would allow the estimation of the effects on bank income and the consequent capital effects of credit losses.

170. The scope of this estimation exercise should be broad and include all material portfolios under IRB. The time horizon of the stress-testing analysis should be consistent with the specifics of the scenario and should be long enough to measure the material effects of the scenario on key performance measures. For example, if a scenario such as a historical recession has material income and segment migration effects over two years, the appropriate time horizon is at least two years.

171. The stress-testing exercise should also take into account a bank's discretionary actions that affect regulatory capital levels. For example, a bank's plan to reduce dividends in the face of lowered income would, if implemented, affect retained earnings and the capital accounts. Holding more than the minimum regulatory capital requirements during normal economic conditions is a key discretionary action. Such discretionary actions must be consistent with the bank's documented regulatory capital management policy. Because discretionary plans may or may not be implemented, a bank should estimate the relevant capital ratios both with and without these actions.

D. Validation

Introduction

172. Validation consists of a wide range of activities intended to assure that the risk segmentation method and the risk quantification process are logical and sound and that the segment-level forecasts of PD, LGD and EAD are accurate.

173. It is often rather difficult to disentangle the effects of the risk segmentation system from those of the quantification process, in particular with respect to validation. Some aspects of the validation of the risk segmentation system can be assessed independently; those have been discussed in chapter II. However, to a very significant degree, the accuracy, logic, and statistical powers of the segmentation system are inextricably intertwined with the accuracy and validity of the risk parameters estimated on the basis of that segmentation. Therefore, most of the discussion that follows applies to both the risk segmentation system and the risk parameter quantification process.

174. The units that develop and test the segmentation and quantification processes should conduct the types of ongoing validation discussed below. In addition, there must be independent review conducted by a separate unit. See chapter V for details.

RS–28: A validation process must cover all aspects of IRB retail quantification.

175. Validation of the risk quantification process should focus on the three estimated segment-level retail IRB parameters, PD, LGD, and EAD. Although the established validation process should result in an overall assessment of IRB quantification for each parameter, it also must cover each of the four stages of the quantification process as described in preceding sections of this chapter (data, estimation, mapping, and application). Validation of the risk segmentation system should focus on the design and the ongoing ability of the system to divide exposures into stable and homogeneous segments that separate exposures effectively by risk. The process must be updated periodically to incorporate new developments in validation practices and to ensure that validation methods remain appropriate. Documentation must be updated whenever validation methods change.

RS–29: A bank must establish policies for all aspects of validation. A bank must comprehensively validate risk segmentation and quantification at least annually, document the results, and report its findings to senior management.

176. A full and comprehensive annual validation is a minimum for effective risk management under IRB. More frequent validation may be appropriate for certain parts of the IRB system and in certain circumstances; for example, during high-default periods, banks should compute realized default and loss severity rates more frequently. They must document the results of validation and report them to appropriate levels of senior risk management.

RS–30: Banks must use a variety of validation approaches or tools; no single validation tool can completely and conclusively assess IRB quantification. A bank's validation processes must include the evaluation of logic, ongoing monitoring, and the comparison of estimated parameter values with actual outcomes.

177. Banks must have processes designed to give reasonable assurances of their quantification systems' accuracy. The ongoing process to confirm and ensure accuracy consists of:

- The evaluation of developmental evidence (evaluation of logic) or the evaluation of the conceptual soundness of the approach to quantification;
- Ongoing monitoring of system implementation and reasonableness (verification and benchmarking); and
- Back-testing (comparing actual with predicted outcomes).

178. IRB banks are expected to employ all of the components of this process. However, the data to perform comprehensive back-testing may not be available in the early stages of implementing an IRB segmentation and quantification process. In addition, back-testing may be difficult if a bank's process for modeling risks is evolving significantly. Therefore, banks may at times need to rely more heavily on developmental evidence, quality control tests, and benchmarking to assure themselves and other interested parties that their quantification processes are likely to be accurate.

Developmental Evidence

RS–31: Banks must evaluate the developmental evidence, or logic, involved with the development of the risk segmentation system and the quantification process.

179. Evaluating logic is essential in validating the risk segmentation system and all four stages of the quantification process. Developing a risk segmentation system and quantification process requires banks to adopt methods, choose characteristics, and make adjustments; each of these actions requires judgment. Validation should ensure that these judgments are plausible and informed and that they reflect as much as possible evolving industry practice and the latest theoretical developments and empirical techniques in the risk management field.

180. Evaluating developmental evidence involves making a reasonable assessment of the quality of the quantification process by analyzing the design and construction of the four stages of quantification. Developmental evidence is intended to answer these questions: Could the risk segmentation system be expected to accurately measure the risk within each segment and to separate the risk between segments? Could the quantification process be expected to accurately estimate PDs, LGDs, and EADs? That evidence will have to be revisited whenever the bank changes its quantification process or its risk

segmentation system. Since risk analysis at advanced banks is constantly evolving, the evaluation of developmental evidence is likely to be an important ongoing part of the process.

181. Generally, the evaluation of developmental evidence will include a body of expert opinion. Developmental evidence in support of the risk segmentation system includes the statistical design of the segmentation in separating exposures into stable and homogeneous segments and the selection and combination of default risk drivers. Developmental evidence in support of techniques used in the quantification process must include information on the logic that supports the methods chosen for the four stages of quantification. The developmental evidence will be more persuasive when it includes empirical evidence on the power of the segmentation system to separate exposures by risk and the accuracy of the quantification process. The sufficiency of the developmental evidence will itself be a matter of informed expert opinion, and experts should be able to draw conclusions about whether an IRB system would be likely to perform satisfactorily.

Ongoing Process Verification and Benchmarking

RS–32: Banks must conduct ongoing process verification on the developed risk segmentation system and quantification process to ensure proper implementation.

182. The second source of analytical support for the validity of a bank's IRB systems is the ongoing analysis to confirm that the process continues to perform as intended. Such analysis involves process verification and benchmarking.

183. Verification activities address the question: Are methods of separating exposures into segments and quantifying risk parameters being used, monitored, and updated as designed?

184. Risk segmentation and quantification process verification also includes monitoring of model overrides. If individuals have the ability to override models, the bank should have both a policy stating the tolerance for overrides and a monitoring system for identifying the occurrence of and reasons for overrides. The performance of overrides should be tracked separately.

RS–33: Banks must benchmark their risk quantification estimates against other sources.

185. A bank must also assess whether it has quantified the risk parameters on the reference data accurately by comparing those estimates with alternative PD, LGD, and EAD estimates from internal and industry sources, a process broadly described as benchmarking. Benchmarking should also include the comparison of the quantification results derived from different risk segmentation criteria.

186. Benchmarking allows a bank to compare the robustness of its estimates with those of other estimation techniques and data sources. Results of benchmarking exercises can be a valuable diagnostic tool in checking for potential weaknesses in a bank's risk quantification system. A bank should investigate the sources of substantial discrepancies between its IRB risk parameters and those observed in the benchmarking exercise.

Back-Testing

RS–34: Banks must develop statistical tests to back-test their IRB risk quantification processes. Banks must establish tolerance limits for differences between expected and actual outcomes, and banks must have a validation policy that requires and outlines remedial actions to be taken when policy tolerances are exceeded.

187. A bank must back-test its risk parameter estimates by regularly comparing actual segment-level default rates, loss severities, and exposure-at-default experience from its portfolio with its PD, LGD, EL, and EAD estimates. However, back-testing is only one element of the broader validation process, and often it will not permit identification of the specific reasons for discrepancies between expectations and outcomes. Rather, it will indicate only that further investigation is necessary.

188. Random chance and many other factors will make discrepancies between realized outcomes and those predicted by the estimated risk parameters inevitable. Even for segments with a large number of exposures, unexpected changes in aggregate economic conditions can lead to differences between realized and predicted outcomes. However, if these discrepancies are unduly large, the bank should analyze the discrepancies to determine the cause. If the discrepancies demonstrate a systematic tendency to decrease regulatory capital, the nature and source of the bias requires even more detailed scrutiny.

189. Banks have wide flexibility in developing statistical tests to back-test their retail risk parameter quantification and retail risk segmentation systems. Regardless of the back-testing method used, the bank should establish thresholds or accuracy tolerance levels for validation results. Results that breach thresholds should bring an appropriate response; that response should depend on the results and should not necessarily be to change the design of the segmentation system or the quantification of the risk parameter estimates. The bank's validation policy should describe (at least in broad terms) the types of required responses when relevant action thresholds are crossed.

IV. Data Maintenance

A. Overview

190. Banks adopting the IRB approach for retail exposures must use advanced data maintenance practices to support their risk segmentation systems, quantification processes, validation, and control and oversight mechanisms described in this guidance. Timely, accurate, and reliable data are the foundation for retail credit risk management, and IRB status reinforces the importance of both data and the means to store, retrieve, and use them.

191. IRB banks will implement different risk segmentation systems and quantification processes, and therefore their supporting data structure and elements will differ. Within a bank, moreover, risk segmentation and quantification processes may differ across business lines and countries. Therefore, the data structures and practices adopted will be unique to each bank.

192. While banks will have substantial flexibility in the specific design of their data maintenance systems, the underlying principle in this guidance is that the data systems must be of sufficient depth, scope, and reliability to implement and evaluate the IRB retail credit risk system. The system must be able to do the following:

- Develop a risk segmentation system and assign retail exposures to segments;
- Develop a quantification process and assign risk parameter estimates to segments;
- Validate the IRB risk segmentation system criteria and architecture;
- Validate the IRB risk parameter estimates;
- Produce internal and public reports; and
- Support the overall retail credit risk management process.

193. Data maintenance systems must enable banks to undertake necessary changes in their IRB systems and to improve methods in credit risk management over time. This will require that systems be capable of providing detailed historical data and new data elements for enhanced model development and new product testing.

194. This chapter covers retail IRB data requirements and systems

comprising the loan characteristics specific to the bank's exposures, the credit characteristics of the bank's borrowers, and the performance history of the bank's exposures. It is expected that over time historical data sets used for risk segmentation and reference data for quantification discussed in chapters II and III will be constructed primarily from these internal data, but they may be supplemented by external data when necessary.

B. General Data Requirements

RS–35: The bank must collect and maintain sufficient data to support its IRB retail credit risk system.

195. Banks must develop data systems capable of supporting their risk segmentation systems and quantification processes. Given the risk segmentation criteria and quantification components that are necessary for the IRB retail credit risk system, the bank must establish historical databases at the individual loan level.

196. At a minimum, the bank must maintain loan and borrower risk characteristics that significantly affect origination decisions (for example, credit score, collateral type, loan-to-value ratio), as well as ongoing characteristics that significantly affect account management decisions (for example, refreshed credit scores, utilization, payment history), whether or not those are used directly in the segmentation system.

197. The bank must maintain data history at the loan level for all loans in the portfolio on performance components (for example, balance and payment history) and loan disposition (for example, prepayment, default, recoveries) necessary for PD, LGD, and EAD quantification.

198. Data necessary to support segmentation systems and quantification processes may vary by business line and by country or wherever the key drivers of risk are unique to the portfolio, different data elements are available, or different measurements of loss are appropriate.

199. As discussed in chapter III, banks must use the best available data for the development of risk segmentation systems and for historical reference data sets used in risk parameter quantification.

200. Given the bank-specific basis of assigning retail exposures to segments, over time internal data should become the primary source of information for estimating IRB risk parameters. Banks using external data for quantification must demonstrate a strong link between (a) the bank's process of assigning exposures to a segment and the process used by the external data source and (b) the bank's internal risk profile and the composition of the external data.

201. Internal data refer to data on the historical loan and risk characteristics and the performance of loans in a bank's own portfolio—even if some input components are purchased from outside sources. Property appraisals purchased from a third-party appraiser for updating LTVs of the bank's mortgage exposures would be internal data on loan characteristics. Credit scores purchased from a credit bureau for borrowers with existing exposures would be internal data on borrower characteristics. However, if a bank purchases extensive data on borrower and loan risk characteristics and the performance of other banks' portfolios (for example, about a new product with which the bank has no experience), such data would be considered external.

202. External data may provide more accurate estimates of the risk parameters, particularly during the early years of IRB implementation. Banks should document the use of external data and retain those data in accordance with all of the requirements for internal data. It is expected that banks will improve the quality of their internal data over time.

RS–36: Banks must retain all significant data elements used in the IRB retail credit risk system for at least five years and must include a period of portfolio stress. This data requirement applies to all loans and lines that were open at any time during this period.

203. Banks must retain a minimum five-year loan-level history of the entire portfolio. The standard above establishes the minimum requirement for banks to retain significant data elements (key risk drivers) used in the risk segmentation system or in the quantification of the risk parameters (PD, LGD, and EAD). However, it is expected that banks will retain additional data elements used in their internal credit risk management systems.

204. If the most recent period of portfolio stress occurred more than five years ago, banks must retain additional data to cover the stress period. These data may be in the form of representative statistical samples of the portfolio, rather than data from all loans. In addition, these data need not cover the period between the stress period and the most recent five-year period. The method of any sampling should be statistically sound and well documented.

205. Banks must gather and retain disposition data, including recovery data on defaulted loans (for example, date and dollar value of recoveries and collection expenses) sufficient to develop LGD and EAD estimates. For many banks, information related to recoveries and collection expenses currently exists only at an aggregate level. These banks should develop interim solutions and a plan to improve data availability.

206. Banks must retain data on losses (including recoveries, expenses, and dates) incurred in their revolving portfolios for at least five years or longer to include a period of high credit losses, in sufficient detail to calculate the average loss rates and the volatility of those loss rates over time. These parameters are necessary to determine eligibility for QRE capital treatment (see chapter III).

207. Banks are encouraged to retain data beyond the minimum requirements because they will need robust historical databases containing key risk drivers and performance components over as long a historical period as possible to facilitate the development and validation of new, more advanced methods.

208. A data structure designed to create a historical data warehouse at the loan level may take many forms. For example, the loan-level data may be collected and stored at the business line, while segment-level data inputs may be stored in a centralized database. Ultimately, the objective is for the bank to be able to access loan-level data, as needed, using a structure that is sufficiently robust to support validation and improvements in the IRB system.

Standards for Refreshed Data

RS–37: Banks must retain refreshed data elements related to key credit risk drivers, performance components, and loan disposition consistent with advanced credit risk management standards and commensurate with the risk and size of the program.

209. Maintaining up-to-date information is necessary to support a more risk-sensitive and accurate capital computation. This information may consist of refreshed information on segmentation criteria such as credit scores, as well as refreshed performance indicators such as payment history. In documenting its segmentation approach, a bank must specify the time frames for updating data elements involved with the capital calculation.

210. For many retail products, banks update key loan and borrower risk characteristics and performance metrics monthly for account management and risk measurement purposes. For other portfolios or other data elements, data may be refreshed less frequently. Data

elements should be updated with a frequency necessary for the reliable measurement of credit risk for the particular portfolio or business line and consistent with advanced credit risk management practices.

Loan Sales

RS–38: Banks must maintain data to allow for a thorough review of asset sale transactions.

211. Asset sales may involve exposures from a variety of portfolio segments, and sale pricing may not be available at a granular level. It is important that the bank be able to quantify the impact of removing a portion of loans from risk segments across the portfolio and the effect of asset sale activity on loss mitigation strategies. Documentation for these transactions should be sufficient for supervisors to determine how asset sale activity affects the integrity of the IRB risk segmentation method, quantification, and the resulting capital calculations.

Validation and Refinement

RS–39: Retained data must be sufficient to support IRB validation requirements.

212. Data should be sufficient to facilitate the back-testing, benchmarking, ongoing monitoring, and developmental evidence aspects of the validation process described in chapters II and III.

Data Standards for Outsourced Activities

RS–40: Banks must ensure that outsourced activities performed by third-party vendors are supported by sufficient data to meet IRB requirements.

213. Certain processes, such as loan servicing, broker or correspondent origination, collection, and asset management, may be outsourced to or otherwise involve third parties. The necessary data capture and oversight of risk management standards for these portfolios and processes must be carried out as if they were conducted internally.

Calculating Capital Ratios and Reporting to the Public

RS–41: At each reporting period, aggregate exposures across all risk segments must be reconciled to ensure that all exposures are accounted for appropriately.

214. Data retained by the bank will be essential for regulatory risk-based capital calculations and public reporting under the Pillar 3 disclosures. These uses underscore the need for a well-defined data maintenance framework and strong controls over data integrity. Total exposures should be tied to systems of record, and documentation should be maintained for this process for all reporting periods.

C. Managing Data Quality and Integrity

Documentation and Definitions

RS–42: Banks must develop and document the process for ensuring data integrity and for delivering, retaining, and updating inputs to the IRB data warehouse. Also, banks must develop comprehensive definitions for the data elements used for each credit group or business line (a ''data dictionary'').

215. Banks must formalize how they manage data. The full documentation of a bank's data management provides a means of evaluating whether the data maintenance framework is functioning as intended. Moreover, banks must be able to communicate precise definitions of the items to be collected. Consequently, every bank should develop a ''data dictionary'' to ensure consistent inputs from business units and data vendors and to allow third parties (such as auditors or bank supervisors) to evaluate data quality and integrity.

RS–43: Banks must maintain detailed documentation on changes over time to the risk segmentation system and the quantification process, including data elements, method, and supporting processes.

216. When changes are made to risk segmentation systems or the quantification processes, the bank must be able to determine how these changes affect capital calculations. Detailed documentation is necessary for the bank to identify the sources of any significant changes in the capital charges under IRB.

Data Access and Scalability

RS–44: Banks must store data in a format that allows timely retrieval for analysis and validation of risk segmentation methods and parameter quantification processes. Data systems must be scalable to accommodate the growing needs of the business lines, the centralized data functions, and risk analysis over time.

217. Banks may have a variety of storage techniques and systems to create their data warehouses and data marts. IRB data standards can be achieved by unifying existing accounting, servicing, processing, and workout and risk management systems, provided the linkages between these systems are well documented and include sufficient edit and integrity checks to ensure that the data can be used reliably. The data architecture must be designed to be scalable to allow for growth in portfolios, data elements, history, and product scope.

Data Gaps

RS–45: If data gaps occur, banks must specify interim measures to quantify IRB risk parameters and must establish a plan to meet the data maintenance standards.

218. A data gap is the absence of key data elements necessary for the design and application of the bank's risk segmentation system, for the quantification of the risk parameters, or for validation of the segmentation and quantification systems. One common cause of data gaps is a merger or acquisition. Merging or acquiring banks must develop a plan for creating an integrated IRB system. Data gaps may also arise as banks make the transition to full implementation of IRB systems.

219. As an interim measure, banks should seek to obtain data from external sources to supplement internal data shortfalls. Alternatively, the reference data sometimes may be drawn from other sections of the portfolio, but only when the business lines and loan and borrower characteristics are sufficiently similar. The bank must document any transitional steps and should take an appropriately conservative approach to quantification when data gaps exist.

220. The level of effort placed on filling data gaps should be commensurate with the current and anticipated volume of exposures to be incorporated into the bank's IRB system.

V. Control and Oversight Mechanisms

A. Overview

221. Risk management processes and controls, which are the foundation of retail lending activities, are essential to product development, pricing, underwriting, account management activities, portfolio performance forecasting, and economic capital modeling and long-term capital planning. Banks will use similar processes and controls to ensure the accuracy of their segmentation, quantification, and regulatory capital levels.

RS–46: IRB banks must implement an effective system of controls and oversight.

222. This system must include controls over lending activities, independent review, transparency, accountability, use of risk parameter estimates for internal risk management purposes, internal and external audit, and board and senior management oversight. Banks will have flexibility in

how these elements are combined, provided they incorporate sufficient checks and balances to ensure that the credit risk management system is functioning properly.

223. IRB banks must have controls and oversight to ensure the integrity of the risk segmentation system and the accuracy of the risk parameter estimates used for determining regulatory capital under the IRB framework. Table 5.1 lists the key components of an IRB control and oversight system. These controls can be combined or structured to reinforce one another in a variety of different ways.

TABLE 5.1.—CONTROL AND OVERSIGHT MECHANISMS

Controls over retail lending activities	A structure and system of management and controls must be established to ensure credit quality and data integrity.
Accountability	Responsibilities and lines of authority should be documented in bank policy.
Independent review	An independent review process must evaluate the integrity of the IRB risk segmentation system and quantification process.
Transparency	The IRB retail credit risk system must be sufficiently transparent to enable third parties to understand key aspects of the segmentation system and quantification process.
Use of risk estimates	IRB risk parameter estimates must be consistent with internal risk measurements that are used to guide risk management activities and financial management.
Internal and external audit	Internal and external audit must assess the effectiveness of control and oversight mechanisms and overall compliance with the IRB standards.
Board and senior management oversight	Ultimate responsibility for the performance of the IRB retail credit risk system rests with senior management and the board.

B. Controls Over Lending Activities

RS–47: Banks must have an independent risk management function that provides oversight of retail lending activities.

224. An independent risk management function is not directly involved in the credit decision process. The group's staff members should be compensated principally on how effectively they manage credit risk. The risk management function should be responsible for setting credit policies and ensuring that credit standards are followed. Retail credit review and compliance management are functions that should augment and support risk management activities.

RS–48: Banks must have an effective loan review function for retail credit portfolios.

225. An effective loan review for retail credit is an essential control for all IRB banks. Loan review must be independent of the lending process. The numbers, experience, and knowledge of personnel in loan review should be commensurate with the complexity and risk of the bank's retail loan portfolios.

226. The scope of reviews should provide an assessment of the quality of risk management and quantity of risk in retail loan portfolios. The frequency of reviews should be based on the risk and size of the portfolios. Reports should clearly identify any concerns. Banks should have a process for timely resolution of issues and weaknesses identified by loan review.

RS–49: A quality control function must confirm that all retail lending activities follow established policies.

227. The purpose of quality control is to provide ongoing assurance that all retail lending activities adhere to the bank's policies and procedures. The quality control program should monitor and evaluate the integrity of credit origination, account management, and collection activities and should provide timely feedback to senior management. Without strong quality control systems governing all aspects of the lending process, the IRB retail credit risk system can be significantly compromised.

228. The quality control function should be formally established and operate independently of the loan production process, collections, and servicing functions. The quality control program should have established operating procedures and stated requirements for sample size and selection. Coverage of this function should include statistically valid samples.

229. The quality control function should generate monthly reports to appropriate levels of management, outlining findings and identifying policy exceptions. This information should be used to address weaknesses in lending activities. The function should seek corrective action as necessary.

RS–50: Management information systems (MIS) must be sufficiently comprehensive to monitor and measure credit quality and performance and to allow proactive and effective risk management.

230. Comprehensive MIS is needed to support risk management. Reports should measure risk for each stage of the life-cycle for retail loans and provide early warning of changes in risk profiles. Front-end reporting generally includes score distribution, score overrides, exception reporting, and other pertinent borrower and collateral information. Ongoing portfolio MIS should provide information about the overall risk profile, portfolio performance, and the direction of risk, including score distributions, changes in score distributions, early default analysis, and vintage analysis. Collection reporting should include delinquency roll rates, static pool cash collection analysis, and data on volumes and performance for workouts and loss mitigation programs. Banks must have a process to ensure that reports are accurate and consistent.

RS–51: Adequate controls and monitoring systems must be in place to effectively supervise all third parties involved in the lending process.

231. Vendor management should include a process to identify, monitor, manage, and control the risks posed by third-party providers. Vendor arrangements should be established based on adequate due diligence and should include written contracts that outline duties, obligations, and responsibilities of both parties. Banks are expected to provide ongoing oversight for third-party arrangements to ensure that activities are conducted in a safe and sound manner and in compliance with the law. Underlying controls should be the same as if the bank were conducting the activity directly.

232. Banks frequently use third parties such as brokers, dealers, and correspondents in the loan origination process. While these sources of new loans provide positive benefits, they also warrant strong oversight. For loans that involve brokers and dealers, banks should ensure that adequate controls, such as loan verification activities, credit scoring, and the collateral valuation process, exist over loan

processing. Strong control processes over brokers and dealers can help ensure that underwriting decisions are based on reliable information. For correspondent originations, banks should have adequate monitoring systems in place to ensure that loans meet the bank's internal underwriting requirements.

C. Accountability

RS–52: Bank policies must identify individuals responsible for all aspects of the retail IRB credit risk system.

233. Responsibilities and lines of authority should be documented in bank policy. Personnel should have the tools and resources necessary to carry out their responsibilities, and their performance should be evaluated against clear and specific objectives. Individuals should be held accountable for complying with applicable policies and ensuring that those aspects of the IRB system that are within their control are unbiased and accurate.

D. Independent Review of Retail IRB Processes

RS–53: Banks must have a comprehensive, independent review process that is responsible for ensuring the integrity of the IRB risk segmentation system and quantification process.

234. The review process should be independent of the individuals who develop the underlying segmentation systems and perform quantification activities. The activities of this review process could be distributed across multiple areas or housed within one unit. Organizations will choose a structure that fits their management and oversight framework. For example, the independent review might be conducted by loan review or other similar units, subject to the independence requirement above. Individuals performing the reviews should possess the requisite technical skills and expertise.

235. The review should be conducted at least annually and should encompass all aspects of the process, including:

- Compliance with policies and procedures;
- Design and effectiveness of the segmentation system;
- Quantification process and accuracy of parameter estimates;
- Model development, use, and validation;
- Adequacy of data systems and controls; and
- Adequacy of staff skills and experience.

236. The review process should identify any weaknesses, make recommendations, and ensure corrective action. Significant findings of IRB reviews must be reported to senior management and the board.

E. Transparency

RS–54: IRB banks must have a transparent retail IRB process.

237. Transparency is the ability of third parties, such as loan reviewers, auditors, and supervisors, to understand the design, operations, and accuracy of the risk segmentation system and quantification process for retail IRB.

238. Transparency in the risk segmentation system and quantification process may be achieved through documentation that covers the following:

- The segmentation design, including selection of risk drivers, use of refreshed information, and granularity of segmentation;
- Parameter estimates and the processes used for their estimation, including significant adjustments and assumptions;
- Data requirements;
- Documentation for model development, implementation, and validation; and
- Specific responsibilities of and performance standards for individuals and units involved in the retail IRB process and its oversight.

F. Use of Risk Estimates

RS–55: Retail IRB risk parameter estimates must be consistent with risk estimates used to guide day-to-day retail risk management activities.

239. Banks must demonstrate that IRB segmentation and IRB risk parameter estimates are consistent with those used by bank management in its planning, execution, and oversight of retail lending activities. Risk drivers for IRB segmentation purposes should correspond to risk drivers used as part of the overall risk management of the lines of business. IRB risk parameter estimates of PD, LGD, and EAD should be incorporated in credit risk management, internal capital allocation, and corporate governance. Banks should compare actual default rates with PD and actual dollar loss rates with internal forecasts for each of the retail IRB products.

G. Internal and External Audit

RS–56: Internal and external audit must annually evaluate compliance with the retail IRB capital regulations and supervisory guidance.

240. Internal audit should report to the board and management on the bank's compliance with the retail IRB standards, including ones applicable to the segmentation system and estimation of the IRB risk parameters. This report will allow the board and management to affirm that the risk segmentation system, the quantification process, and the surrounding controls are in compliance with IRB standards. This will be critical for public disclosure and ongoing review by supervisors. As part of its review of control mechanisms, internal audit should evaluate the depth, scope, and quality of the independent review and quality control functions.

241. As part of the process of certifying financial statements, external auditors should, to the extent appropriate under applicable auditing and professional standards, ascertain whether the IRB system is measuring credit risk appropriately and confirm that the bank's regulatory capital position is fairly presented. Auditors should also evaluate, to the extent appropriate under these standards, the bank's internal control functions relating to regulatory capital and its compliance with the risk-based capital regulation and supervisory guidance.

H. Corporate Oversight

RS–57: The full board or a designated committee of the board must review and approve key elements of the IRB system.

RS–58: Senior management must ensure that all components of the IRB system, including controls, are functioning as intended and comply with the risk-based capital regulation and supervisory guidance.

242. Senior management's oversight is expected to be more active than that of the board of directors. Senior management must have an extensive understanding of credit policies, underwriting standards, and account management activities (including collections) and must understand how these factors affect the IRB risk segmentation system, risk-parameter estimates, and data maintenance requirements.

243. The depth and frequency of information provided to the board and senior management must be commensurate with their oversight responsibilities and the condition of the bank. The board should be provided with periodic high-level reports summarizing the performance of the retail IRB credit risk system. Senior management should receive more detailed reports covering topics such as:

- Risk profile by retail portfolio;
- Actual losses by risk segment compared with the IRB risk parameter estimates (PD, LGD, and EAD), with emphasis on unexpected results;
- Changing portfolio trends and risks;

• Reports measuring changes in regulatory and economic capital;
• Reports generated by the independent review function, quality control, audit, and other control units; and
• Results of capital stress testing.

244. Although all of a bank's controls must function smoothly, independently, and in concert with the others, the direction and oversight provided by the board and senior management is critical to ensuring that the IRB system is functioning properly.

245. For retail portfolios that are managed across legal entities, the board of directors and senior management of each insured depository institution must have sufficient information about its exposures to accurately assess and report on its own risk.

246. Senior management should confirm that activities conducted across multiple legal entities meet the following conditions:
• Products are managed centrally using consistent policies;
• Segments that cross multiple legal entities meet the requirements of chapter II to ensure that they have homogeneous risk characteristics;
• Exposures outside the United States are not grouped with domestic exposures; and
• Validation and back-testing activities include the additional step of ensuring that minimum capital requirements for each entity are accurate.

Appendix A: Process Analysis Examples

Example 1: A Seamless Application of the Four Stages of Quantification (See Paragraph 70)

Consider a bank that has been making indirect installment loans through furniture stores for a number of years. Seven years of internal data history are available, over a period including a significant recession. The bank has segmented this portfolio over the whole period in a consistent manner: by bureau score, internal behavioral score, and monthly disposable income. In addition, LGDs for this portfolio have demonstrated significant cyclical variability over the period covered by the bank's data history.

The bank can empirically show that the participating furniture retailers, underwriting criteria, and collection practices have remained reasonably stable over the seven-year period, and the definition of default has been consistent with the IRB definition. However, there are frequent changes in the bank's products and in the borrowing population that affect the risk characteristics of its loans, so the bank uses only the most recent seven-year data history as new data become available (assuming that the data includes a period of recession).

The PD is calculated as the average of the seven annual PDs. The LGD is the loss severity observed during periods when credit losses for this type of product have been high. The EAD for non-defaulted loans is calculated as the outstanding loan amount at the time of capital measurement plus any accrued but unpaid interest and fees.

In this example, the four stages have not been explicitly mentioned or applied. Nonetheless, at the level of detail presented (which is clearly somewhat simplified), the quantification appears to satisfy most of the standards in the chapter (subject, of course, to validation).

If the bank desires, it can put its quantification into the following four-stage framework:

a. The bank's own historical data serve as the reference data;

b. Estimation consists of calculating the historical average PD, the recessionary LGD, and the outstanding balance by segment;

c. Mapping consists primarily of ensuring that the segmentation schemes and the definition of default are consistent between the reference data portfolios and the bank's existing portfolios; and

d. Application is a matter of using the risk parameter estimates from the reference portfolios for each segment of the existing portfolios in the regulatory capital formulas.

Thus, as discussed in the main chapter text, the four stages of quantification are not intended as a set of rigid requirements that must be followed in every detail in all circumstances. Rather, they should be seen as a conceptual framework, and as an analytical and implementation guide for those institutions whose data histories, institutional circumstances, or unusual complexities require the greater detail and specificity.

Example 2: Quantification of the PD for First-Lien Mortgages (See Paragraph 106)

a. For the past four years a mortgage portfolio has been concentrated in a less risky geographic region than the historical portfolio, whose data history goes back several more years. The bank analyzes external mortgage data by geographic region over the same time period to identify regional differences in default rates. Analysis of the reference data indicates similar regional differences.

b. The recent four-year period does not include a period of stress, so the bank uses its full internal data history to encompass a period of stress. To estimate the PD parameter over a long run of data history that is also comparable to the current portfolio, the bank develops a statistical model of the PD over combined internal and external performance history. The variables used as PD predictors included geographic region, loan and borrower risk characteristics, loan-to-value ratios, and lagged mortgage foreclosure rates by region. With this model the bank claims that it is able to fully utilize its 13-year history of internal data as well as take into account the effects of the more recent geographic change in its portfolio.

Process Analysis for Example 2:

Data—The existing portfolio of first-lien mortgages is segmented by LTV, credit score, tenor, fixed-rate vs. ARM, and debt-to-income ratio. For a given segment, the bank has good historical data from its own portfolio. The reference data consist of nine years of lifetime internal performance history for loans originated between 1990 and 1999, which are concentrated within the riskier geographic region, plus four years of recent internal history (2000–2003). The internal data is supplemented by external regional mortgage data over the full 13-year history (1999–2003).

Estimation—The bank builds a statistical model that estimates PD as a function of regional foreclosure rates for the previous two quarters, the loan-to-value ratio, credit score, debt-to-income ratio, loan tenor, and geographic region, and it builds separate models by product type (*e.g.*, fixed-rate vs. ARM). A similar model of LGD is estimated using a regression model that incorporates economic factors. An LGD estimate reflective of periods of high credit losses in the mortgage market is produced by stressing the economic factors in the model. The model results are robust in terms of the standard statistical diagnostic tests. The model has continued to perform satisfactorily in validations outside the development sample.

Mapping—Since the 1990–1999 period, the bank has shifted much of its first-lien mortgage business to a different region of the country, one that historically has experienced lower default rates. The bank segments its portfolio by region and borrower and loan characteristics utilized in the model to produce a long-run average PD estimate by region, so as to take the lower regional default rates into account. An ''economic downturn'' LGD is also calculated by the same segmentation. Therefore, in mapping from the reference data to its existing portfolio data the bank assigns the average PD and the economic downturn LGD per segment of exposures in the existing portfolio, as estimated by the models.

Application—The bank will now apply the regression models to its existing portfolio to estimate the PD and LGD values for each segment in the first-lien mortgage portfolio. It will measure EAD for non-defaulted loans as the present outstanding balance per segment plus any accrued but unpaid interest and fees. Then it will enter the three risk parameters into the IRB mortgage formula to assess the minimum required regulatory capital for each segment.

Example 3: PD Estimation From Dollars Defaulted and Present Portfolio Value (See Paragraph 108)

Paragraph 101 defines PD in terms of accounts, not dollars: the number of defaulted accounts during the course of a year divided by the number of accounts open at the beginning of the year. This example discusses issues involved with methods that attempt to derive PD from dollar loss rates. If a bank chooses to derive a PD in this manner, the bank will need to consider a variety of factors to ensure that the PD estimate is an accurate reflection of the expected rate of defaults on an account basis.

a. A credit card bank directly measures its average dollars of economic losses for each segment and uses the percentage of dollars defaulted, rather than as the percentage of loans defaulted, as the estimate of PD.

Specifically, the ratio employed is the gross loss divided by the exposure at default. The gross loss (before recovery) is directly measured on a segment of accounts over a one-year time horizon. The bank estimates exposure at default (EAD) for a segment as the current outstanding balances plus the expected drawdowns on open balances if all accounts default (including accrued but unpaid interest and fees at the time of default).

b. The bank's risk segmentation system separates exposures by size of credit line and credit line utilization as well as by credit score. If the segmentation appropriately controls for current balances and credit lines, then it should produce accurate estimates of both PD and EAD. The bank regularly validates the accuracy of the EAD estimates and the consistency of the percentage-of-dollars-defaulted measure with the account default rate.

Process Analysis for Example 3:

Data—The historical reference data consist of measurements of the outstanding dollar balances and open credit lines at the beginning of the year. For accounts that defaulted over the following year the gross defaulted balances are also measured. The aggregate dollar amounts are measured for each segment.

Estimation—The bank's dollar PD parameter is estimated as the long-run average of the one-year PDs. Each one-year PD is measured as the gross balances of defaulted loans divided by the estimated EAD. The following example illustrates why granular segmentation by balance and credit line can be important. In the first row of the following table, all loans with account PD equal to 1% are grouped together in a single segment. Using an estimatedLEQ of 0.7 derived from historical reference data, the Gross Loss / ED measure equal 1% and is equivalent to the account PD. In the second row of the table however, although all loans with account PD equal to 1% are still included in the segment, the Gross Loss/EAD measure has fallen to 0.94% and is therefore no longer an acceptable proxy for the account PD.

Account PD	Average balance per account	Average credit line per account	Number accounts in segment	Total outstanding balance	Total undrawn lines	Estimated percent drawdown (LEQ)	Estimated EAD	Gross loss	Gross loss/EAD
1.0%	$225	$600	2,000	$450,000	$750,000	70%	$975,000	$9,750	1.0%
1.0%	$285	$760	2,000	$570,000	$950,000	70%	$1,235,000	$11,550	0.94%

The reason for this discrepancy can be found in the granularity of the bank's segmentation process. By grouping together all loans with account PD equal to 1%, the bank is combining loans with significantly different average balances per account and average credit lines. They are also using an estimate for LEQ (0.7) based on historical data for particular portfolios of loans with PD equal to 1% that is not accurate for portfolios with different distributions of loans by outstanding balances and credit lines.

This can be seen by looking at a finer segmentation of the portfolios. In the table below, the segment from the top row in the previous table is divided more finely, by average balance and credit line. The historically estimated LEQs differ significantly between the segments, and the 0.7 LEQ in the previous table represents a weighted average of the two different segment values. Because the LEQ estimate is the weighted average of the two segment LEQs, then as long as the distribution of accounts between the two segments remains steady the Gross Loss/EAD measure shown in the first table equals 1% and is equivalent to the account PD.

Account PD	Average balance per account	Average credit line per account	Number accounts in segment	Total outstanding balance	Total undrawn lines	Estimated percent drawdown (LEQ)	Estimated EAD	Gross loss	Gross loss/EAD
1.0%	$150	$400	1,000	$150,000	$250,000	90%	$375,000	$3,750	1.0%
1.0%	$300	$800	1,000	$300,000	$500,000	60%	$600,000	$6,000	1.0%
Aggregated 1% PD Segment						Weighted Average LEQ			
1.0%	$225	$600	2,000	$450,000	$750,000	70%	$975,000	$9,750	1.0

In the next table, the larger segment (from the second row in the first table above) is divided into two finer segments in the same manner as previously. In fact, the average balances, average lines, and LEQs are all the same as in the previous case. The only change is in the proportion of accounts in each segment. However, by using the LEQ of 0.7 derived from the coarser segmentation, the bank estimated Gross Loss/EAD as 0.94 in the second row of the first table. The finer, more accurate, weighted LEQ of 0.62 produces a Gross Loss/EAD measure of 1.0%, equivalent to the account PD.

SEGMENTATION BY PD, BALANCE AND CREDIT LINE

Account PD	Average balance per account	Average credit line per account	Number accounts in segment	Total outstanding balance	Total undrawn lines	Estimated percent drawdown (LEQ)	Estimated EAD	Gross loss	Gross loss/ EAD
1.0%	$150	$400	200	$30,000	$50,000	90%	$75,000	$750	1.0%
1.0%	$300	$800	1,800	$540,000	$900,000	60%	$1,080,000	$10,800	1.0%
Aggregated 1% PD Segment						Weighted Average LEQ			
1.0%	$285	$760	2,000	$570,000	$950,000	62%	$1,155,000	$11,500	1.0%

Thus we see that, with the proper segmentation criteria and sufficiently granular segmentation, the Gross Dollar Loss/EAD measure can produce a PD that is equivalent to the correct account PD. If a bank were to use the coarser segmentation shown in the first table (i.e., all accounts with account PD=1), the bank would have to carefully monitor the changes in distribution of accounts within this broader segment and update the weighted average LEQ on a timely basis. Given how rapidly portfolio composition can change in credit card markets, this may be a challenging task.

Note: Another method of calculating the PD from dollar measurements used at some institutions is to estimate the PD for a segment as the accumulated gross losses at the end of a one-year period divided by the outstanding balances at the beginning of the year. This does not provide an estimate equivalent to an account default rate if initial balances on accounts that eventually default are significantly different from those that do not default, which is generally the case. Consider the examples in the following table. (For simplicity, these examples assume there is no amortization of principal over the year.)

Number total accounts	Number defaulted accounts	Account PD	Total beginning outstanding balances	Average beginning balance non-defaulted accounts	Average beginning balance defaulted accounts	Total gross losses	Gross Losses/ beginning outstanding balances
1000	20	2.0%	$1,000,000	$1.005	$750	$15,000	1.5%
1000	20	2.0%	$1,000,000	$995	$1,250	$25,000	2.5%

As shown in the table, if balances on accounts that default are higher than balances on those that do not (which is the more common situation), then the Gross Losses/Outstanding Balances measure will overestimate PD. Conversely, if defaulted accounts have lower balances, the Gross Loss/Outstanding Balances measure will underestimate PD.

Mapping—To develop a risk segmentation system that produces homogeneous and stable segments, the bank identifies the drivers of both default risk and drawdowns and then segments by these drivers. The mapping would involve linking segments in the reference data to segments in the present portfolio using the same risk segmentation system. However, during recessionary periods, the bank monitors changes in the market and economic environment that could change the relationships between default risk and drawdowns and the underlying drivers of these risks. If there were systematic changes, then the risk segmentation system would need to be updated.

Application—The application is generally a straightforward, direct application of estimates from segments in the reference data to segments in the existing portfolio. Estimates would be adjusted if the default risk were expected to change systematically from previous periods, for example, because of a trend toward higher credit lines.

Example 4: PD Quantification With Adjustments for Seasoning (See Paragraphs 109–112)

a. PDs for a bank's credit card portfolio exhibit a characteristic time profile by age—a seasoning curve. As a result of the bank's analyses, the shape of this seasoning curve has been established by specific products and borrower credit quality at origination utilizing data from vintages over the last five years. The bank regularly analyzes new vintages to capture changes in the characteristic time profile of PDs over changing economic and market environments. Systematic changes are incorporated into new seasoning curves.

b. The risk segmentation system criteria for seasoned and unseasoned loans include updated account age, or ''time on books.''

c. For unseasoned loans, if seasoning effects are material, the PD is estimated as an annualized cumulative default rate over the remaining expected life of the loans. For seasoned loans the PD should simply be measured as a long-run average of the one-year-ahead PDs.

Process Analysis for Example 4:

Data—The main reference data consists of five years (or more) of portfolio history. Segments are defined by updated borrower, product, and loan characteristics including account age. Supplemental reference data consist of vintage analyses of similar products originated within the same time period, providing seasoning curves specific to borrower credit quality at origination, product, and loan type. Given the level of the annualized default rate observed in the early history of a cohort, the historical seasoning curves should indicate the trend that PDs follow over the remaining expected life of the loans.

The bank presents analyses indicating that the seasoning curve can be reasonably specified by borrower credit quality at origination and carefully monitors new cohorts for any deviation of the time profile of one-year PDs from the corresponding seasoning curve.

Estimation—For seasoned loans, a long-run average PD is calculated for each segment by updated borrower, product, and loan characteristics, including loan age. For unseasoned loans, the PD is the estimated annualized cumulative default rate over the remaining expected life of the loans.

Mapping—The risk segmentation system of the present portfolio is the same as that employed for the reference data. This makes the mapping straightforward along the lines of refreshed borrower credit quality. However, the bank should ensure while mapping that the product characteristics in the reference data are mapped to equivalent product characteristics in the present portfolio.

Application—At the application stage, the long-run PD estimated from the reference data may simply be applied to the matching segments in the existing portfolio.

Appendix B: Technical Examples

Example 1 From General Standards (See Paragraph 91 and Standard RS–13)

The following example illustrates one possible solution when sufficient internal historical data is not available for an entire portfolio. The bank may be able to identify sub-samples within its portfolio that experienced increased default rates during the available length of history, even though the aggregate portfolio may not have realized such a trend. For example, data may be available from local or regional recessions in New England (late 1980s and 1990–1995), Texas (1983–1989), or California (1991–1995). The bank must be able to demonstrate that the drivers of high default rates in these regional recessions can be extrapolated to the entire portfolio as well as justify and document any resulting adjustments that would be necessary in the mapping and application stages.

Example 2 From General Standards (See Paragraphs 93 and 130 and Standard RS–14)

At least two common types of mapping challenges may arise in regard to PD, LGD, and/or EAD quantification:

a. First, even if similarly named characteristics are available in the reference data and portfolio data, they may not be directly comparable. For example, in a portfolio of auto loans, the particular types of auto loans (for example, new or used, direct or indirect) may vary from one application to another. Hence, a bank should ensure that linked characteristics are truly similar. Although adjustments to enhance comparability can be appropriate, they must be rigorously developed and documented.

b. Second, levels of aggregation may vary. For example, the reference data may only broadly identify collateral types—say, broad categories of automakers. The bank's information systems for its portfolio might supply more detail such as auto makes and models plus the age and condition of vehicles. To apply the estimates derived from the reference data, the bank may regroup the existing portfolio in order to match broader aggregations in the reference data.

Example 3 From the PD Estimation Standards (See Paragraph 107)

The following examples illustrate possible PD estimation methods that might appear in bank practice and potential problems with some methods:

Example 3a: Adjustments When PDs Are Measured Over a Shorter Time Horizon and Then Annualized

In practice the account default rate may be estimated at a monthly or quarterly rate and ''annualized'' to produce the equivalent yearly default rate. However, this annualized rate may not be accurate over a one-year horizon if the bank does not track loans that migrate within the year. For example, consider a segment with very high credit quality—call it the ''superprime'' segment. Over the year, many accounts that default have first migrated to lower credit quality segments at stages during the year. So, annualizing the quarterly default rate for the ''superprime'' portfolio would be an underestimate of the true one-year default rate. The PD should be measured from actual portfolio performance of all loans in the bucket over a full one-year horizon.

The following example presents this issue. The quarterly transition rates between the three non-default rating classes (''superprime,'' ''prime,'' and ''subprime'') and the transition rates into default are listed below:

	Beginning of quarter			
	Superprime	Prime	Subprime	Default
End of Quarter:				
Superprime	94%	2%	1%	0
Prime	5%	94%	3%	0
Subprime	1%	3%	95%	0
Default	0.1%	1%	2%	100%

A particular segment is 100% superprime at the beginning of a one-year time horizon. Over each quarter some accounts migrate into lower quality states with correspondingly higher default rates. As a result of this migration, the population distribution among the rating classes changes over each quarter. The Superprime, Prime, and Subprime columns of the following table show the changing distribution for these loans that were all superprime as of January 1. For example, at the end of the second quarter, only 88% of the surviving loans remain superprime, 9% are now prime, and 2% are subprime.

The last column represents the cumulative default rate for these formerly Superprime loans. That is, at the end of the second quarter 0.26% will have defaulted; at the end of the third quarter, 0.49% will have defaulted, and at the end of the year, a total of 0.77% of the original all-Superprime segment will have defaulted, which is substantially higher than four times the quarterly default rate, or 0.4%.[11]

Time	Superprime (percent)	Prime (percent)	Subprime (percent)	Default (percent)
January 1	100	0	0	0
End of Quarter 1	94	5	1	0.10
End of Quarter 2	88	9	2	0.26
End of Quarter 3	83	13	3	0.49
End of Quarter 4	78	17	4	0.77

Note that this illustration assumes that the transitions from one quarter to the next are the same for each quarter throughout the year. In practice, they may vary from quarter to quarter for many reasons.

Example 3b: Portfolio Growth and the Timing of Default Measurements

The method and timing of the measurement of portfolio growth and defaulted accounts for a pool can also bias the PD estimates. Defaulted accounts would be measured at year-end and should not include accounts opened within the year. The total number of accounts should be measured at the beginning of the year. When the total number of accounts is measured concurrently with the number of defaulted accounts, if the total pool size increases (decreases) substantially over the one-year observation period, the PD could be underestimated (overestimated) substantially.

In the following example, the portfolio shows four alternative growth rates over one year: (1) The portfolio shrinks by 5 percent, (2) the portfolio shrinks by 10 percent, (3) the portfolio grows by 5 percent, or (4) the portfolio grows by 10 percent:

The portfolio starts at the beginning of the year with 1 million accounts and $100 million in outstanding balances, or an average of $100 per account. For simplicity it is assumed that the PD and average account balance remain constant over the year while the number of accounts changes.

Annual portfolio growth rate	Total portfolio accounts		Accounts defaulted by end of year	PD front start of year portfolio	PD from end of year portfolio (percent)
	Start of year	End of year			
−5%	1,000,000	950,000	20,000	2.0	2.1
−10%	1,000,000	900,000	20,000	2.0	2.2
5%	1,000,000	1,050,000	20,000	2.0	1.9
10%	1,000,000	1,100,000	20,000	2.0	1.8

Note: It is assumed that all 20,000 defaults that occurred during the year were accounts that were part of the portfolio on January 1. The Other Retail risk weight curve was used for this example, and LGD is assumed to be 90% in all four cases.

[11] The cumulative default rate is the sum of the defaults at the end of the previous period plus new defaults during the period just ended. The new defaults are determined as the sum of the proportions of loans in each rating category times the respective default rate for that category. For example, at the end of the second quarter, the new defaults equal the 94% of the loans that were still Superprime at the beginning of the period times the Superprime default rate of 0.1% plus the 5% of loans that had become Prime times the Prime default rate of 1%; plus the 1% of loans that had become Subprime times the Subprime default rate of 2%. This yields a default rate during the second quarter of 0.25%, which is added to the 0.1% default rate from the end of the first quarter to produce a cumulative rate of 0.26% at the end of the second quarter.

This example shows clearly how the use of the end-of-year portfolio size, rather than the number of accounts that were open at the beginning of the year, produces significant misestimation of PD, which should equal 2.0% in all four cases.

Example 4 From the PD Estimation Standards (See Paragraph 102)

A bank uses the last five years of internal default history to estimate a long-run average PD for each pool of retail exposures. However, it recognizes that the internal experience does not include any years of portfolio stress. To remedy this and still take advantage of its experience, the bank uses external loss data to adjust the PD estimates upward in the years of economic downturn or systematic economic stress. (An example of an external data source would be historical mortgage default data purchased from a vendor.). Using the external data, the bank creates an index by calculating the ratio between each year's mortgage default rate per pool and the long-run average rate per pool of exposures over the last five years, both from the external data. The bank assumes that the relationship observed in the external data applies to its own mortgage portfolio, and it uses the index to adjust the estimates for the internal data accordingly. If the bank rigorously validates, justifies, and documents these adjustments, it would satisfy the standard.

Example 5 From the LGD Estimation Standards (See Paragraphs 127–129)

A bank determines that a business unit forms a homogeneous pool for the purposes of estimating loss severity. That is, although the loans in this pool may differ in some respects, the bank determines that they share a similar loss experience in default. The bank must provide reasonable support for its claim through an analysis of lending practices and available internal data. If it does so convincingly, a common pool across a business unit is consistent with the standard.

Example 6 From the LGD Estimation Section (See Paragraphs 127–129)

A bank divides observed defaults in the reference pool according to geographic region and loan-to-value in a mortgage portfolio. One of the pools has too few observations to produce a reliable estimate. By augmenting the loss data in this pool with data from other pools (for example, neighboring geographic regions with the same LTV), the bank calculates an estimate of the severity. The bank must validate, justify, and document the accuracy of this proxy value.

In another example, a bank segments its default data in a credit card business unit by a number of borrower, loan, and product characteristics. Although the available internal historical evidence indicates a higher LGD, the bank judgmentally assigns a loss severity of 70 percent to a particular prime pool. The bank justifies this reduction in the LGD by claiming that it will do a better job of following policies for monitoring credit card performance in the future, for example, repricing accounts to generate more income and monitoring lines for problem accounts. Such an LGD adjustment is not appropriate because it is based on anticipated future performance rather than realized performance.

Example 7 From the LGD Estimation Standards (See Paragraphs 127–129)

Timing of Defaults and Recoveries.

A bank measures recovery rates over time for a business line by loan characteristics. The recoveries are measured as an aggregate stream of cash inflows monthly or quarterly from all defaulted loans on book and not based on recoveries from a fixed group of defaulted loans. Collection costs are assessed as a proportion of the defaulted balances. Therefore loss severity rates are measured in the aggregate as:

$$\text{LGD} = \frac{(\text{defaulted balances} - \text{discounted recoveries net of collections costs})}{(\text{defaulted balances})}$$

where all dollar values are measured concurrently.

If defaulted balances are approximately constant over time, this method does not create any problems. However, when defaulted balances change over time, the bank should adjust for changes in the volume of defaulted accounts, since the use of recoveries from a prior group of defaulted accounts could underestimate the loss severity when aggregate defaulted balances were higher in a previous period, and overestimate them when defaulted balances were lower in a previous period.

The following example demonstrates how the loss severity can be underestimated during periods of decreased defaulted balances when the loss severity is measured as the present defaulted balances minus recoveries from the previous period's defaulted balances (using a fixed 30 percent recovery rate) divided by the current period's defaulted balances.*

Portfolio balances (EAD)	One-year default rate	Defaulted balances	$Recoveries 30% net discounted recovery rate	Measured loss severity (True LGD = 70%)
$1,000,000	2.00%	$20,000	$6,000	70%
1,000,000	1.80	18,000	6,000	67
1,000,000	1.60	16,000	5,400	66
1,000,000	1.20	12,000	4,800	60

Thus, while an accurate measure of LGD would remain constant at 70% over the entire four-year period, this example shows how the use of the current year's defaulted balances, during a period when these balances are trending downward, leads to underestimates of LGD that grow more significant each year.

Example 8: The Effect of the Purchase Discount on EAD and LGD (see paragraph 138)

Suppose a bank buys a QRE portfolio at a 5 percent discount. Assuming that PD and recoveries remain unchanged, EAD and LGD both change because of the discount. The discount does not act as a reserve against EL or as a capital offset against UL. For the purchasing bank, the newly purchased portfolio is initially put on the books (EAD) at the discounted price the bank paid. The EL and UL numbers would change from those of a portfolio bought or originated at par as follows:

Recoveries	$50
Asset face value	100
Asset correlation	4
PD	5

	No discount	5% discount
EAD	$100	$95
Loss = EAD − recovery	50	45
LGD = Loss/EAD	50.0	47.4
EL = PD × LGD × EAD	2.50	2.25
UL (capital) per $ of EAD	4.87	4.61
IRB capital = UL per $ × EAD	4.87	4.38

List of Acronyms

ALLL Allowance for loan and lease loss
EAD Exposure at default
EL Expected loss
FFIEC Federal Financial Institutions Examination Council
GAAP Generally Accepted Accounting Principles
HELOC Home Equity Line of Credit
IRB Advanced internal ratings-based approach (Basel II)
K Unexpected loss capital requirement
LEQ Loan equivalent exposure
LGD Loss given default
LTV Loan-to-value ratio
MIS Management Information Systems
PD Probability of default
PMI Private Mortgage Insurance
QIS Quantitative Impact Study
QRE Qualifying revolving retail exposures
R Asset value correlation (AVC)
RS Retail Standard
RWA Risk-weighted assets
UL Unexpected loss

Dated: October 15, 2004.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Dated: October 15, 2004.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this day of October 18, 2004.

Robert E. Feldman,

Executive Secretary.

By the Office of Thrift Supervision.

Dated: October 14, 2004.

James T. Gilleran,

Director.

[FR Doc. 04–23771 Filed 10–26–04; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

Federal Register

Wednesday,
October 27, 2004

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121
Miscellaneous Cabin Safety Changes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. FAA–2004–19412, Amendment Nos. 25–116 and 121–306]

RIN 2120–AF77

Miscellaneous Cabin Safety Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the airworthiness standards for transport category airplanes relating to flight attendant assist spaces and handles, door hold-open features, outside viewing means, interior compartment doors, and portable oxygen equipment. It also amends the operating requirements for domestic, flag, and supplemental operations. These amendments are part of the Agency's continuing effort to upgrade the regulations to improve the overall level of safety in areas where the state-of-the-art and good design practice have indicated that such upgrades are warranted. One of the changes also responds to a National Transportation Safety Board recommendation. These amendments result in both new type design regulations as well as retrofit requirements. In addition, several editorial changes were adopted.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

(**Note:** The FAA transitioned to the new Department of Transportation's Docket Management System (DMS) during the course of this rulemaking. At earlier stages of the rulemaking, the docket number was ''28637.'' Under the new DMS, the docket number is FAA–2004–19412.)

You can get an electronic copy using the Internet by:

(1) Searching the DOTs electronic DMS Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://faa.gov/avr/arm/index.cfm*; or

(3) Assessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** publication on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov.*

Background

These amendments are based on notice of proposed rulemaking (NPRM), Notice No. 96–9, which was published in the **Federal Register** on July 24, 1996 (61 FR 38552). The notice proposed to upgrade several cabin safety requirements, relating to flight attendant assist spaces and handles, door hold-open features, outside viewing means, interior compartment doors, and portable oxygen equipment. These proposals were intended to take advantage of the state-of-the-art, as well as common design practice. One of the proposals responds to a National Transportation Safety Board (NTSB) recommendation.

For some time, the FAA has worked to achieve harmonization on its rulemaking with the Joint Aviation Authorities (JAA) (recently changed to the European Aviation Safety Agency) and other airworthiness authorities through the Aviation Rulemaking Advisory Committee (ARAC) and its harmonization working groups. Although this rulemaking project has not been the subject of a harmonization working group activity, because it was initiated prior to the time harmonization became a high priority with the FAA and JAA, comments received from the JAA members were addressed in this final rule.

As indicated in Notice No. 96–9, the FAA amended 14 Code of Federal Regulations (CFR) part 25 pertaining to cabin safety and crashworthiness following accidents experienced in the 1960's (Amendment No. 25–15, 32 FR 13255, September 20, 1967; Amendment No. 25–17, 33 FR 9065, June 20, 1968; Amendment No. 25–20, 34 FR 5543, March 22, 1969; and Amendment No. 25–32, 37 FR 3964, February 15, 1972). These amendments were designed to correct certain deficiencies identified during the accident investigations, and, in many cases, were retrofit on airplanes already in service. More recent amendments (Amendment No. 25–59, 49 FR 43188, October 26, 1984; Amendment No. 25–64, 53 FR 17640, May 17, 1988; and Amendment No. 25–76, 57 FR 19220, May 4, 1992) pertaining to cabin safety, such as seat cushion flammability, dynamic testing standards for seats and improved access to Type III emergency exits, have resulted from specific research and development. These amendments are deemed necessary and appropriate by the FAA considering the current state-of-the-art and existing design practice. Although nearly all existing installations already comply, these amendments will ensure that any others comply as well.

Discussion of Amendment to Parts 25 and 121

Flight Attendant Assist Space

Section 25.813 requires that each non-overwing exit equipped with an assist means have adequate space next to the exit for a flight attendant to stand and assist occupants while evacuating. The size of this ''assist space'' is not specified in the regulations. Guidance material in Civil Aeronautics Manual (CAM) 4b.362–6(b) states that the assist space should be a 12x20-inch rectangle on the floor and be useable. A rectangle of this size is generally recognized as the minimum size acceptable for compliance with § 25.813 or its predecessor § 4b.362(g) of the Civil Air Regulations (CAR). Deviations have been permitted if the efficacy of the assist space is demonstrated.

Demonstrations of a smaller or irregular shaped assist space usually take place in controlled evacuation tests conducted under conditions similar to those specified in Appendix J to part 25 for emergency evacuation

demonstrations. While these demonstrations have value, they do not account for the potentially adverse conditions likely to be encountered in service. Notice No. 96–9 proposed a minimum size for assist spaces to provide more standardized application of the requirement and give additional margins of safety under adverse conditions which may be encountered in service.

Service experience, both in tests and actual incidents, indicates that the assist space recommended in CAM 4b.362–6(b) is adequate; therefore, the NPRM proposed that the assist space be a minimum of 12x20-inches rectangle on the floor with the 12-inch dimension essentially parallel to the exit opening. The location of the assist space relative to the exit opening is not specified since the best location may vary from one installation to another. In any case, the assist space should be located to provide the maximum benefit to evacuation. The minimum dimensions specified assumed that a flight attendant would be able to stand upright. Installations which do not provide adequate headroom to enable a 95th percentile male to stand upright would probably need an increase in the fore and aft dimension of the assist space to provide the same level of efficacy as a full height installation. (Information on anthropometry can be found in NASA reference publication 1024, Anthropometric Source Book Volume I, Anthropometry for Designers.) The amount of increase required in these instances would be dependent on the details of the installation and would not be specified in the regulations. Since issuing the NPRM, the FAA has seen improved standardization in assist space configurations and dimensions during certification. Since the NPRM contained several explanatory statements on the purpose of the assist space, it is possible that this information contributed to reduced standardization problems. Given that one of the main objectives of the proposal was to improve standardization and that a prescriptive requirement is generally not preferred where alternatives are possible, the FAA is withdrawing this portion of the proposal, and retaining the requirement that the assist space be a rectangle with dimensions that are ''adequate.'' The current guidance in Advisory Circular 25–17 regarding the acceptability of a 12x20-inch rectangle will be retained. Recent experience has shown that this approach is acceptable and that standardization can be achieved, while allowing some flexibility in specific demonstrations of compliance.

The assist space requirement applies to all larger exit types (*i.e.*, Types I, II, A, B and C), regardless of whether they are over the wing. Except for Type A exits, assist spaces have not been required for exits over the wing. The need for an assist space over the wing is dependent primarily on the presence of an assist means where the rate of egress is critical. Future airplane designs may make the installation of overwing floor level (other than Type A) exits an attractive option and they are accounted for here. In addition, current regulations only require an assist space for the larger exits when there is also an assist means required. For airplanes of relatively small passenger capacity, service experience indicates that this is a reasonable standard. However, for airplanes with a larger passenger capacity, an assist space should be required, whether or not an assist means is required. Therefore, this amendment also requires an assist space at all Type II or larger exits on airplanes with a passenger capacity of 80 or greater. This includes tailcone exits that are qualified for 25 additional passenger seats under the provisions of § 25.807(g)(9)(ii) and are required by § 25.810(a) to have such assist means, since these can become primary exits under certain evacuation scenarios and will require the assistance of a flight attendant to perform at their potential. This amendment also corrects a long-standing editorial error in part 121, that states that assist spaces are required at all Type I or II exits, regardless of whether or not an assist means is installed and regardless of passenger capacity. This amendment adds the words ''equipped with an assist means'' to the existing text in § 121.310(f)(2), to make it clear that an assist space is only required in certain cases.

Conversely, the regulations previously required an assist space for non-floor level, non-overwing exits that incorporate an assist means. There is at present one airplane with exits that fall into this category. Given the design difficulties presented by such a design, the prospects for such exits in the future do not seem likely. Furthermore the appropriateness of the current standards for such exits appears questionable (the one example currently in existence was approved by special conditions). This provision in the regulations is removed by this amendment. In the unlikely event a design of this nature were ever proposed, the FAA would develop criteria appropriate for that design in the form of special conditions.

Most existing installations currently comply with this requirement, however, for the few that do not, the economic penalty for retrofit compliance would be quite high. It is also difficult to quantify the benefit that might be gained from reconfiguring airplanes already manufactured and placed in service to comply with this amendment; therefore, no retrofit action was proposed. For newly manufactured airplanes, § 121.310(f)(2) is amended to require that the assist spaces of all airplanes manufactured 4 years after the effective date of this amendment comply with these criteria. As is discussed later, in the compliance time section, the compliance date was changed from 2 years to 4 years based on comments received.

Flight Attendant Assist Handles

One common design feature of large transport airplanes has been assist handles to enable flight attendants to steady themselves while assisting passengers in evacuating. The assist handle can be crucial in permitting the flight attendant to perform his or her duties efficiently. This, in turn, can have a direct bearing on the success of an emergency evacuation. Prior to this amendment, there was no requirement for assist handles although most, if not all, installations incorporate them. Although an assist handle may not always be necessary due to the unpredictable nature of an emergency evacuation, it is a valuable tool that should be available to the flight attendant when it is needed. In addition, the assist handle is an integral part of flight attendant training. The addition of the requirement in part 25 would eliminate incompatibilities between the type design and operational requirements.

In some cases a handle designed to provide the flight attendant with leverage when opening, or more commonly, closing passenger and service doors is installed. Often, this handle is not located at the designated assist space. Service experience has shown that the presence of the handle at another location can mislead a flight attendant into standing in a location that could obstruct the required passageway. The FAA has addressed such installations specifically. Service experience also indicates that there is a need for assist handles to enable flight attendants to steady themselves while actuating the manual inflation handle on escape slides. The manual handle is located on the doorsill, and essentially requires the attendant to straddle the door opening when pulling the handle. The attendant is quite vulnerable to the

possibility of being pushed out of the exit. The FAA expects that it will be possible for one handle to serve both required purposes (*i.e.*, emergency evacuation and assist means activation) at a given location; however, two different handles might be needed at the same exit in some instances. The assist handle(s) should be usable by the range of flight attendants encompassing the 5th percentile female to the 95th percentile male.

This amendment requires that assist handles be installed at the designated assist space for all floor level exits that require an assist space. In addition, a companion change to § 121.310(l) is applicable to newly manufactured airplanes entering the fleet, and requires a retrofit of the existing in-service fleet. A 3-year compliance period is adopted.

Outside Viewing Means

Emergency evacuations are frequently necessary either due to, or in combination with, a hazard such as a fire outside the airplane. Because the hazard may pose an immediate threat to the occupants of the airplane, it is often necessary to avoid opening certain otherwise useable emergency exits in order to prevent injury to the evacuees. In this context, a viewing window or other means of assessing the outside conditions and determining whether an exit should be opened is extremely valuable. A viewing window is commonly provided in most exits in service; however, it has not been required, and some exits in service do not incorporate one. This amendment requires a means (for example, either a window in the exit itself, or in an adjacent frame bay) that provides a view of the ground area where evacuees will make contact upon leaving the airplane in an emergency evacuation.

The means should provide visibility taking into account all conditions of landing gear collapse and, since evacuations can take place at night, outside illumination conditions. The issue of exterior illumination was not explicitly discussed in the NPRM, nor were any comments received on this subject. The fact that there were no comments may indicate that it is generally understood that the viewing means needs to be available in conditions of darkness. However, in the interests of clarity, the rule language is amended to include the phrase ''under all lighting conditions.'' In the context of devices intended to be used in an emergency, the viewing means would clearly have limited utility if it were only available in the daylight. Exterior emergency lighting is an explicit requirement of § 25.812 to address evacuation in darkness. The FAA therefore regards this clarification as a nonsubstantive change that will help standardize application of the rule.

Details such as size and prismatic characteristics of the viewing means are not specified. The FAA considers that sufficient design latitude should be available to permit several acceptable concepts. The viewing means would be required to be available to a person preparing to open an exit. Thus, if a window were in an adjacent frame bay, there could not be a partition or divider between the exit and the window to meet the intent of the requirement. For some exits, two windows might be installed at each exit in order to provide sufficient viewing coverage. In terms of exterior illumination, there is no specific minimum illumination level requirement, although the emergency lighting system could be used to provide visibility of the area of ground contact, as well as any other interior or exterior lights that would be available in an emergency.

The viewing requirement applies only to airplanes for which an application for type certificate is made after the effective date. Due to the technical difficulties and resultant cost of modifying existing airplanes, no retrofit requirement is included.

Exit Hold-Open Feature

Also important is the capability of an exit to remain open during an evacuation without threat of premature closing. Adverse altitude, wind or contact by evacuating passengers could cause an unsecured door to close during an evacuation, and jeopardize the safety of subsequent passengers. Most passenger emergency exits currently incorporate a feature, which holds the door open and requires a positive action to disengage. This amendment requires a means to prevent an emergency exit from inadvertently closing once it has been opened in an emergency. The means must automatically engage when the exit is opened and require positive action to disengage. As discussed in the notice, a removable hatch would be considered to comply, by definition, as would exits hinged on the bottom. This latter type of exit is covered further in the *Discussion of Comments* section. This requirement amends § 25.809 for new type certificates and creates a new § 121.310(l), which would require that transport category airplanes (the applicability to transport category airplanes was inadvertently omitted in the notice and, in light of other, subsequent changes to part 121, is restored in the final rule to make the intent clear) in service after a date 2 years after the effective date of the amendment comply with the provisions of the part 25 requirement, and redesignate existing paragraph (l) as a new paragraph (n).

Interior Doors

Following accident experience in the 1960's the FAA amended part 25, in Amendment 25–15, to prohibit the installation of doors ''between passenger compartments.'' At the time of the amendment, it was common practice to divide the first class and tourist class cabins with a solid door. It was determined in the course of accident investigations that this door could be detrimental in evacuation of passengers, who tended not to recognize that there was an exit beyond the door, even if it were the closest available. The resulting regulatory change was geared specifically at preventing this occurrence. However, the regulation was worded such that doors may be installed between passengers and exits provided there are not passengers on both sides of the door. For example, a door could be installed across the main passenger aisle at the end of a cabin. The regulations only required that the door be open for takeoff and landing. It is now considered undesirable to permit the installation of a door between any passenger and an exit. Should such a door (either through omission or mechanical failure) become jammed in the event of an emergency evacuation, persons could be prevented or delayed in evacuating which could result in fatalities or injuries that would not otherwise have occurred. The hazards associated with a jammed door are still present whether or not passengers are on both sides of the door, and the recognition factor has not been mitigated. Either could result in the same consequences—failure of some passengers to evacuate the airplane. This amendment prohibits the installation of any door between any passenger and any passenger emergency exit. This would include prohibiting doors that close off galley areas that serve as passageways or crossaisles, doors across emergency exits (frequently used on ''VIP'' airplanes), and doors into rooms that are occupiable for takeoff and landing. This would also include prohibiting a door across one of the aisles on a multi-aisle airplane, since this closes off the most direct route to an exit for some of the passengers.

In the past there has been considerable discussion regarding what constituted a ''door.'' One common proposal has been to install a fabric diaphragm bounded by a metal frame,

which is movable, usually much like a pocket door. This type of installation has been accepted provided the frame provides no more resistance to a person passing through it than a normal curtain tie back. Such installations do, however, create the same recognition problem as do ''solid'' doors and would no longer be acceptable.

The change to § 25.813(e) applies to all transport category airplanes for which an application for type certificate is made after the effective date regardless of whether they are used in air carrier service. Section 25.813(e) prohibits doors between passengers and emergency exits whereas § 25.813(f) now deals only with doors between crewmembers (outside the flightdeck) and emergency exits and is amended accordingly. Language in paragraph (f) requiring the door latching means to withstand the inertia loads of § 25.561(b) was inadvertently left out of the notice. Since this was purely an editorial error, and does not increase the burden of compliance beyond what it is currently, the language is restored in the final rule. In addition, § 121.310(f)(6) would make the new standards applicable to all other transport category airplanes, operated under that part, 2 years after the effective date of this amendment.

These requirements are not required to be retrofit to non air-carrier operations, *e.g.*, private use airplanes where the number of passengers involved is much smaller and there has been no demonstrated unsafe condition. For reasons discussed below, the requirement as it relates to other than commercial operations is being reconsidered, and may ultimately result in additional rulemaking.

Portable Oxygen Equipment

Finally, this amendment requires that oxygen masks intended for portable oxygen equipment be connected to that equipment. This amendment follows NTSB Safety Recommendation No. A–90–54. During the decompression experienced in the February 1989 United Airlines Flight 811 accident, the NTSB determined that flight attendants had difficulty in using the portable oxygen bottles. These bottles are intended to enable them to move about the cabin, with an adequate oxygen supply, after decompression. The oxygen masks were not connected to the dispensing terminal of the oxygen bottle, thus requiring an additional action by the flight attendant before the unit was useable. The NTSB recommended that all such masks be connected to the oxygen supply, to minimize the time and dexterity necessary for flight attendants to don and use the portable oxygen. The FAA agrees with this recommendation, and therefore amends § 25.1447(c)(4) accordingly. In addition, a companion change is made to § 121.333(d), with a 1-year compliance time.

A 1-year compliance time is chosen in this case because the modification required is a simple connection of the oxygen mask to the supply bottle. This can be done on an overnight visit, or any short interval maintenance visit. One year is considered more than enough time to achieve compliance.

Compliance Time

The following table summarizes the part 121 compliance times.

PART 121 COMPLIANCE REQUIREMENTS

Subject	New aircraft	Existing aircraft
Assist space at Type II or larger exits on airplanes with passenger capacity of 80 or greater.	Airplanes manufactured after November 26, 2008	Not required.
Assist handle where assist space is required	Airplanes manufactured after November 26, 2007	November 26, 2007.
Outside viewing means at all exits	All type certificate applications made after November 26, 2004.	Not required.
Exit hold open feature	Airplanes manufactured after November 26, 2007	Not required.
Prohibition of interior doors (between passengers and emergency exits).	Airplanes manufactured after November 27, 2006	Not required.
Portable oxygen equipment (connection of oxygen masks).	Airplanes manufactured after November 28, 2005	November 28, 2005.

Editorial Changes

The ambiguity in the provisions of § 25.853(f) concerning ashtrays has been removed by requiring that all seated occupants in designated smoking areas are provided with ashtrays. Since designated smoking areas can vary from flight to flight, an adequate number of ashtrays would need to be installed at delivery to account for the largest smoking section anticipated by the airline. Alternatively, the size of the smoking section would be limited by the number and location of the ashtrays.

Prior to this amendment, the introductory phrase in § 25.855 stated: ''For each cargo and baggage compartment not occupied by crew or passengers, the following apply.'' It has been brought to the attention of the FAA that this phrase may also cause confusion. By definition, some compartments must be accessible to crewmembers to fight fires in flight; therefore, the exception made by the introductory phrase cannot (and has not been interpreted to) apply to compartments that are only occupied occasionally by crew or passengers. Furthermore, crew and passengers are not permitted to be seated or stationed on a full-time basis in cargo or baggage compartments. Since the exception does not apply to occasional occupancy and since crew and passengers do not occupy cargo or baggage compartments in flight on a full-time basis, the exception made in the phrase has no applicability. Using the present wording of the introductory phrase, it was alleged, in at least one instance, that the standards of § 25.855 did not apply because the cockpit was part of the cargo or baggage compartment. That allegation was unfounded because, regardless of the degree or method of separation, the cockpit can not be considered part of a cargo or baggage compartment. Nevertheless, it does show that the phrase can easily be misinterpreted. Since the exception has no applicability and may cause confusion, the introductory phrase is reworded to simply state, ''For each cargo or baggage compartment, the following apply.'' This is a nonsubstantive change that places no additional burden on any person.

Finally, as a result of the extensive changes to part 25 adopted in Amendment 25–72, many referenced sections were changed. Some of the previous references were inadvertently retained, however, and are no longer correct. Therefore, the FAA has corrected these references to correspond to the current structure of part 25. These changes are purely editorial in nature

and affect §§ 25.812(g)(1)(ii), 25.812(g)(2), 25.812(h), and 25.1411(c).

Discussion of Comments

Comments were received from 19 parties, including foreign and domestic airplane manufacturers, labor associations, foreign and domestic operators, foreign regulatory authorities, and the NTSB. Each proposed change received comments. Five commenters support the proposals as written. Four other commenters agree with specific aspects of the proposal, and did not comment on others. Ten commenters disagree with at least parts of the proposal, with one commenter opposing any changes to part 121.

Flight Attendant Assist Space

Five commenters support the proposal and five commenters oppose all or parts of it.

Comment: One commenter suggests additional rulemaking to require an assist space when the sill height of the exit is greater than 3 feet (versus the current requirement for an assist space when the exit sill height is 6 feet above the ground and requires an assist means). The commenter feels that an assist space is also necessary for exit sill heights between 3 and 6 feet.

Response: The FAA has not considered another sill height when specifying the requirement for an assist space but, rather, the number of passengers on board. In this case, an assist space is required for airplanes of more than 80 passengers, regardless of the sill height. For passenger capacities of 80 or less, the ratios of passengers to exits are decreased; the FAA believes that the presence of an assist means should govern the requirement for an assist space in smaller airplanes. No change is made to the final rule.

Comment: Another commenter, representing certain domestic airlines, while not opposed to the assist space requirement, is concerned about the impact it might have. The commenter contends that any deficiencies would be uncovered by evacuation demonstrations. In addition, the commenter contends that a detailed analysis of the potential impact has not been made.

Response: As discussed in the notice, the FAA does not agree that typical evacuation demonstrations would necessarily reveal deficiencies in assist space dimensions. With respect to the impact of the requirement, as discussed later, this is not anticipated to be significant, given that there is no retrofit application.

Comment: A commenter representing domestic airframe manufacturers disagrees that the change to the assist space requirement was necessary, and also states that evacuation demonstrations are adequate to identify deficiencies. This commenter considers the change an expansion of the existing requirements in that, on some installations, it is not currently possible for the 95th percentile male to stand upright while using the assist space. The commenter questions whether the assist space is evaluated with the exit open or closed, and whether the assist space is a 12x20-inch rectangular solid, from the floor to the height of a 95th percentile male, or whether it may be ''the 95th percentile male humanoid shape.'' The commenter states that the proposal does not adequately define the total envelope of the assist space and will lead to increased costs as specific installations are negotiated further. In addition, the commenter states that incorporation of the requirement into part 121 will render some current configurations (presumably still being produced 2 years after the effective date of the regulation) unacceptable. The costs of compliance for these configurations will involve galley redesign, flight attendant seat relocation, and possible loss of revenue seats, according to the commenter. This would require an operator to have two different interior arrangements on the same airplane type.

Response: As noted previously, the FAA has determined that specifying the dimensions of the assist space in the rule is not necessary. However, the intent of the proposal was to quantify something that has been a basic design practice over 30 years, and eliminate those few instances where a reduced size assist space may have been approved on the basis of ''no observed problems'' in an evacuation demonstration. The proposal would not have changed how the assist space is measured, once established. Since the assist space is only meaningful with the exit open, it would of course, continue to be determined in that condition. Small incursions into the vertical projection of the otherwise rectangular assist space will continue to be acceptable, provided that they are not a hazard, and do not adversely influence the efficacy of the assist space. The need for the assist space to be full-height is noted in Advisory Circular 25–17, page 723, paragraph 411. The AC notes that it is necessary to provide additional space if it is not possible to stand upright. With respect to current designs, only a few designs do not already comply with these criteria. Since the prescriptive dimensional requirements are being withdrawn, the remainder of the commenters concerns are obviated.

Comment: A foreign manufacturer also comments on the potential for the assist space requirement to influence revenue seating. The commenter also objects to the need for an increase in the fore and aft dimension of the assist space when adequate headroom is not provided. This commenter, as well as another commenter representing foreign airworthiness authorities, suggests that the requirement that the 12-inch dimension of the assist space be parallel to the exit is too restrictive, and may not be practical when the exit is located in the tapered section of the fuselage. Both commenters suggest that the 12-inch dimension be parallel to the aircraft centerline.

Response: The FAA agrees that the proposal was too restrictive. It was not our intent to propose precise measurements to ascertain whether the assist space was, in fact, parallel to the exit. By the same token, such measurements would not be expected to ascertain that the assist space is parallel to the airplane centerline. The assist space should generally be oriented with the 12-inch dimension along the length of the airplane, although since the exact dimensions are not specified in the rule, this information will become advisory material. Generally speaking, the assist space is expected to be oriented at an angle somewhere between parallel to the exit and parallel to the airplane centerline, which is no different than current practice. This allows sufficient latitude in identifying the assist space. With respect to additional fore and aft space, this has long been the requirement, as discussed previously.

Comment: Another foreign manufacturer also states that the requirement for an assist space based on passenger capacity, and not the presence of an assist means is highly detrimental to small transports. The commenter suggests that the requirement will force installation of Type III exits, where Type II exits might have been used.

Response: On November 8, 1996, the FAA published Amendment No. 25–88, which adopted a new means of determining passenger capacity and introduced two new exit types (61 FR 57946, November 8, 1996). In this final rule, we are adopting a change to § 25.813(b)(3) to require an assist space for airplanes with ''more than 80 passengers'' rather than ''79 or more passengers'' as stated in the proposal. While this change does not entirely address the commenter's concern, airplanes with one pair of Type I exits and one pair of Type III exits are not

affected, unless the exit sill heights are greater than 6 feet from the ground. Airplanes incorporating more pairs of exits, or larger exits, should incorporate an assist space for the reasons discussed in the notice. It should also be noted that the exit type is based on the configuration of the interior, as well as the physical dimensions of the opening in the fuselage. An exit dimensionally equivalent to a Type II exit would become a Type III exit, irrespective of the size of the opening if an assist space were not provided; the maximum allowable passenger capacity would be reduced accordingly. Therefore, this requirement should not inhibit installation of larger than required exits.

Comment: One commenter also proposes an additional requirement, for exits at the end of a cabin, that the assist space be oriented so that the flight attendant would face passengers as they approach the exit.

Response: In general, the FAA agrees that having the flight attendant face passengers as they approach the exit can only be beneficial. While this is a desirable goal, the FAA does not believe it is feasible to mandate the location of the assist space to this degree. For the orientation of the assist space to make a difference, it would be necessary for the flight attendant to be able to see along the aisles, from the assist space, as passengers approach. The regulations do not currently require this, nor was it proposed in the notice. Therefore, such a requirement is beyond the scope of the notice.

Flight Attendant Assist Handles

Ten commenters address the proposed requirement for flight attendant assist handles. Six of the commenters support the proposal, with one of those commenters suggesting an editorial change.

Comment: Two commenters accept the proposal with respect to new type design, but question the incorporation on existing and newly manufactured airplanes. One commenter requests that the compliance time be extended from 2 to 4 years, while the other commenter proposes that the requirement be limited to new type design only. Both commenters cite the costs of modifications for those airplanes that do not already comply, and assert that there are many such airplanes. In addition, one commenter indicates that it is not known which airplanes currently comply and operators will have to wait for manufacturers' service bulletins in order to make necessary modifications, which will require additional compliance time.

Response: The FAA agrees that the time for compliance may not be adequate in some cases. In particular, the need to address the two functions of the handle(s) on a retrofit basis is potentially much more difficult than for a new design. In order to address both the time for compliance and the potential complexity and associated cost of extensive retrofit, the final rule separates the requirement for a handle to assist the flight attendant while conducting an evacuation and the requirement for a handle to enable the flight attendant to steady himself or herself when actuating the assist means manually. The latter requirement will not apply to the existing fleet. In addition, 3 years are allowed for compliance, both for newly manufactured airplanes and the existing fleet, to install an assist handle to aid in evacuation. Due to other editorial changes in this section, the requirement will be added in § 25.813(b)(6).

Comment: Several commenters question the applicability of the proposed requirement under various scenarios. Some commenters ask whether the handle was required when there is no assist means required.

Response: To the extent that an assist space is required, an assist handle is also required. If there is no assist means, the purpose of the handle would only be to facilitate evacuation. Also, if the assist means had no manual activation mechanism, such as with some airstair doors, the handle would also only be necessary to facilitate evacuation. To make this clear, the phrase ''where applicable'' is added after ''assist means'' in § 25.813(b)(6). Assist means that are not otherwise required, but are provided (such as certain integral airstairs), would not require an assist handle unless an assist space was otherwise required because of passenger capacity.

Comment: Commenters also question whether the assist handle can intrude into the 12x20-inch assist space vertical projection.

Response: To the extent that the assist handle performs it's function while the flight attendant occupies the assist space, the small amount of intrusion into the assist space that might be necessary is considered inconsequential. In fact, the handle could be considered part of the assist space. No change to the regulation is necessary.

Comment: One commenter also notes that there are assist spaces that are not located at the exit sill, and the proposal appears to be geared toward those that are. The commenter asserts that the handle would not appear to provide a benefit when the assist space is away from the exit sill.

Response: The FAA does not agree. The purpose of the assist handle is to provide a steadying means for the flight attendant, during an evacuation, where the flight attendant is affecting the flow through an exit. Whether or not the assist space is at the exit sill, the need for the flight attendant to gain leverage still exists. While the arrangement may be different, the requirement applies, regardless of the location of the assist space relative to the exit sill.

Outside Viewing Means

Ten commenters address the provision for a means to view the outside conditions, prior to opening an exit. While some commenters request specific clarification on certain aspects of the requirement, only one commenter opposes the requirement for certain types of exits.

Comment: Some commenters note that the use of overwing escape systems means that the areas of evacuee ground contact may be distant from the location of the exit itself. In addition, the potential for future design concepts to have multiple decks, as well as longitudinal distances between the exit and the point where the escape system touches the ground should be taken into account.

Response: With respect to the potential for the exit to be somewhat remote from the point where the evacuees would contact the ground, the FAA agrees that this may be the case. The intent of the requirement is to enable a person to ascertain whether to open an exit, and whether it is safe to evacuate through the exit, based on an assessment of the outside conditions. To the extent that the means used for determination of the former does not also allow an assessment of the ground, the FAA agrees that an additional viewing means may be necessary, and that the additional means may be somewhat remote from the exit. We have therefore reworded the amendment to allow for the dual purpose of the viewing means, and to distinguish the required locations of the two.

Comment: One commenter states that the requirement should not apply to ventral, tailcone and overhead (or any exit located above the mid-point of the fuselage) exits, and that the requirement to view areas of evacuee ground contact should be eliminated. The commenter notes that there are currently no windows in these areas of the cabin, and the fuselage structure in the vicinity of these exits does not, in any case, lend itself to a simple window as a means of compliance. The commenter points out

that the condition of the landing gear can influence, by up to 80 degrees of arc in the roll axis, the position of ground contact and most people will not know where to look. Also, the commenter recommends that the requirement not apply to exits that utilize ropes or inertia reels as assist means, for the same reasons.

Response: The FAA does not agree that the requirement should not apply to ventral, tailcone or overhead exits. In most cases, it should be possible to view the outside conditions sufficiently well from a nearby passenger or flightdeck window to ascertain whether to open an overhead exit. This is considered acceptable. With respect to ventral and tailcone exits, the problem is more considerable, but there is no justification for not providing the same features at these types of exits, except for the added complexity. Future type designs may need to incorporate more novel features, to demonstrate compliance. However, the need to be able to determine whether or not to open the exit is no less important for these types of exits.

The FAA specifically requested comments on the feasibility of a viewing means at ventral and tailcone exits. Only one commenter addresses this issue, and does not provide any data to support the contention that the rule should not apply. As to whether passengers would know where to look, with the change discussed above, the functions of the viewing means are more clearly delineated and transparent to the passenger. A crewmember would be more likely to assess the areas of evacuee ground contact, while any person opening an exit should be given the opportunity to make a judgment as to whether to proceed. Therefore, with the changes noted above, the requirement is adopted.

Exit Hold-Open Feature

Eight commenters address the proposal to require a means to prevent exits from inadvertently closing in an emergency. Most commenters agree with the basic proposal but request clarification on specific points.

Comment: One commenter questions the applicability to removable, hatch type exits.

Response: As noted in the preamble to the notice, these exits would be considered in compliance by definition.

Comment: Several commenters address exits that are hinged on the bottom and held open by gravity.

Response: Exits that are hinged on the bottom are considered to comply by virtue of the basic design.

Comment: One commenter proposes a wording change such that the means ''must not require operator action to engage.''

Response: This is more general than the proposed wording, which implies a separate device. As noted above a separate device is not necessarily required; therefore, the wording in the second sentence of § 25.809(i) will be changed to read: ''The means must not require separate action to engage when the exit is opened, and must require positive action to disengage.''

Comment: One commenter expresses concern that the retrofit incorporation of this requirement is based on an assumption that the means currently in service are acceptable. The commenter notes this assumption has not been validated and, if incorrect, will increase the cost of the rulemaking considerably. The commenter suggests that the FAA explicitly state that all such existing devices are acceptable.

Response: The FAA agrees that the suitability of all existing devices has not been positively established, although it is unaware of any designs that would not be acceptable. To preclude an unanticipated compliance burden, and given that the vast majority of transport category airplanes already incorporate such features, the requirement in § 121.310(l) is changed to refer to airplanes manufactured after a date 3 years from the effective date of this amendment.

Interior Doors

The proposed provision relating to interior doors generated the largest number of comments, with 15 commenters responding. Five commenters support the proposal as written. Many commenters represent the corporate aviation community, where certain types of interior doors are currently standard features.

One common installation on corporate aircraft is a seat integrated into the lavatory, that can be occupied for takeoff and landing. Because the lavatory has a door, this door effectively becomes a ''door between passenger compartments,'' and not permitted under the current requirements. However, the FAA has accepted such installations under certain conditions, on an equivalent level of safety basis. It is important to note that the amendment in this final rule would not change the status of such occupied lavatories. They would continue to be assessed on a case-by-case basis and, if the requirements for equivalency were met, could be approved.

Comment: Several commenters have identified what they see as an inconsistency between §§ 25.813(e) and (f).

Response: With respect to the perceived conflict with §§ 25.813(e) and (f), as mentioned in the preamble to the notice, § 25.813(f) addresses occupants other than passengers that might have to use exits on the flightdeck, or in other areas. Thus there is no conflict with the prohibition of doors between passengers and exits established in § 25.813(e).

Comment: Commenters also note an inconsistency between the preamble and the proposed regulatory language in Notice No. 96–9 with respect to retrofit incorporation of the requirement. The preamble states that the proposed requirement would apply to ''newly manufactured'' airplanes, while the proposed regulatory language applies to all transport category airplanes in service. Most commenters agree with the proposal as it relates to commercial aviation. Although one example of an exit inside a lavatory was cited, that would no longer be acceptable under the proposal (or would require removal of the lavatory door).

Response: Regarding the perceived conflict in the preamble and the regulatory language, the regulatory language correctly expresses the intent of the proposal. However, the FAA is aware of at least two existing air carrier installations where the route to an exit could be said to lead through a lavatory. In one case, the installation is literally such that the exit is inside the lavatory. In the other case, the normal interior configuration does not involve the lavatory; however, when in use, the lavatory door extends across the main aisle, and essentially encloses the aft exit, as well as a flight attendant seat. In the latter case, the FAA did not intend to require a substantial change to the type design in order to comply. This installation is arguably in compliance already, although it was not explicitly considered in the proposal. Each of these doors is permissible under the current regulations, because they are not ''doors between passenger compartments.'' In each case however, the airplanes are no longer in production. In both cases, there is no obvious means of compliance that would not either render the lavatory unusable, or result in a substantial reconfiguration of the interior. Therefore, the amendment is changed to apply to newly manufactured airplanes, with no retrofit action to the existing fleet.

Comment: Another commenter requests clarification that the door in the aft pressure bulkhead, leading to a tailcone exit, would not be classified as a ''door between passengers and exits.''

Response: Doors in pressure bulkheads are not considered interior doors, and therefore not subject to this amendment.

Comment: Several commenters advocate the continued allowance of certain types of interior doors for corporate or other special purpose operations. These commenters note that such operations typically involve small numbers of occupants, small numbers of exits (meaning that there is less confusion regarding where each exit is) and passengers that tend to be familiar with the airplane. The commenters point to a lack of adverse service history as justification for retaining the requirement in its current form for these sized airplanes. Some commenters suggest a passenger capacity limitation with respect to when interior doors could be allowed.

Response: Such installations could be acceptable under certain conditions, but would require a separate action, such as an exemption, or new rulemaking. For the basic type certification standard, the requirement is adopted as proposed.

Comment: One commenter points out that this rule would allow a flight attendant seat to be effectively isolated by a door, provided the seat was not adjacent to an exit.

Response: The commenter is correct, although the rule does not change what is permissible in that regard. The FAA is not aware of any such installations, and does not consider that this rule change increases the likelihood that such an installation would be proposed.

The FAA has given careful consideration to the special circumstances surrounding corporate and executive operations, and the differences in certification standards that result from the proposal. While it may be true that a higher percentage of passengers on corporate airplanes (as opposed to air carrier airplanes) are familiar with the exit arrangement, there is no guarantee of such familiarity. While it is true that there is no adverse service history with respect to interior doors on corporate airplanes, this can be attributed to an absence of service history in general, as opposed to any inherent superiority in this type of operation. The FAA is concerned that any regulation could lead to increased use of older airplanes, built to earlier certification standards in general. This could mean that newer airplane types that embody other improved safety features will not get introduced into service. In this case, however, it is doubtful that an interior feature will drive the acquisition of an airplane over considerations such as performance and fuel efficiency offered by new designs. As discussed in the notice, the FAA has not identified an unsafe condition with interior doors in those types of operations, and is therefore not requiring retrofit of this segment of the fleet. Since Notice No. 96–9 was published, the FAA has processed exemptions for privately operated airplanes that allow the installation of interior doors, under certain conditions, when such exemptions have been shown to be in the public interest. These exemptions require specific design features, as well as limit the type of operation permitted (*i.e.,* not offered for hire or common carriage) when such doors are installed. It is the FAA's intention to develop alternative regulatory standards that specifically apply to privately operated airplanes that would address several areas, primarily relating to cabin safety issues. This amendment, however, applies to transport category airplanes in general, irrespective of their intended operation and, as such, is adopted for part 25 as proposed. The FAA will continue to entertain petitions for exemption where public interest is demonstrated for privately operated airplanes.

Portable Oxygen Equipment

Twelve commenters address the proposal to require connection of oxygen masks to the oxygen supply, for portable oxygen equipment. Most commenters fully support the proposal, one commenter states the justification for retrofit seemed vague, but provided no additional substantiating information, and did not offer an alternative.

Comment: One commenter expresses a desire to have the connection for the oxygen mask outside any protective cover, with a separate cap. Another commenter states the proposed § 121.333(d)(2) constitutes a *requirement* for portable oxygen equipment, where none currently exists today either in the operating rules or the type design rules.

Response: All safety equipment is currently required to be protected from inadvertent damage in accordance with § 25.1411, and so adopting an additional requirement for a cap on the oxygen mask connection is not necessary. With respect to whether the proposal requires portable oxygen equipment where it has not been required before, there is an editorial error in the proposed language for § 121.333(d)(2) that would have eliminated fixed installations with spare masks and outlets as an option. Part 25 however, has always required portable oxygen equipment to be immediately available for flight attendants, so this is not a new requirement. In order to account for both portable and fixed installations, the wording in § 121.333(d)(2) has been changed, and a new § 121.333(d)(3) is added so that each subparagraph offers an optional means of compliance.

Comment: One commenter objects to the proposed requirement. The commenter states that there are design, safety and economic reasons why the proposal should not be adopted. The commenter notes that masks are stored with the oxygen bottle, even if not connected to it, and a connection might cause the oxygen hose to kink or abrade. In addition, the commenter is concerned that design changes that might be required to comply with the rule not create compatibility problems with previously approved masks.

Response: The FAA agrees that the oxygen mask is stored with the bottle, but the proposal would provide connection of the mask to the oxygen supply in order to speed the availability of oxygen in an emergency. Since many installations are already delivered in this way, no extraordinary design measures should be required.

Comment: The commenter also is concerned that if oxygen flow is begun prior to removal of the mask from its attachment to the bottle, it might cause rupture of the reservoir bag. The commenter cites an airworthiness directive where something similar occurred.

Response: The airworthiness directive pertains to oxygen mounted in passenger service units where reservoir bags were inadvertently pressurized during testing. In the case of portable equipment, such tests would not be necessary and the bottle would have to be opened inadvertently. In addition, the reservoir bag would have to be configured in a particular manner in order to cause over-pressurization. Again, since this type of installation is already in service, these potential problems should be readily avoidable.

Comment: The commenter also questions whether the connected mask would comply with § 25.869, which requires oxygen systems to be installed so that they will not cause ignition of flammable fluids or vapors in case of leakage. The commenter contends that the connected assembly is more likely to be left open than were the mask not connected.

Response: Section 25.869 is primarily directed at fixed installations that may be installed near other systems, such as hydraulic or fuel systems, where leakage of oxygen could produce a serious, immediate hazard. This section could also apply to portable oxygen bottles, if they were installed in such locations.

For the typical passenger cabin portable installation however, compliance with this section is typically not a significant obstacle. In addition, the FAA does not believe that the likelihood of an oxygen valve being left open is any different with or without the mask connected.

Comment: The commenter also identifies several areas where the estimated costs in the NPRM would be exceeded if design changes are necessary in order to comply. The commenter indicates that there might need to be both changes to the connection hardware, as well as relocation of the bottles and attachment hardware.

Response: As noted previously, the connection of the masks to the oxygen bottle is not an unusual feature or installation and the means to accomplish this are readily available. For the majority of installations, simply connecting the hose to the bottle is all that is required. For those instances where that is not true, the corrective action is not novel or requiring new technology, and can be accomplished easily. The FAA notes that no operators objected to the proposed requirement, and several explicitly concurred.

Finally, the commenter contends that the accident that resulted in the NTSB recommendation involved both difficulty in removing the oxygen mask from its packaging, as well as the time to connect the mask to the bottle. The commenter believes that making the packaging easier to open will satisfy the intent of the recommendation, and notes that equipment suppliers are working to accomplish this.

Response: The FAA concurs that the packaging for oxygen masks could, in many cases, be made easier to open. This does not address the intent of the NTSB recommendation (which was very specific with respect to connection of the oxygen mask) however, and essentially amounts to compliance with the current requirements of § 25.1411(a), which states that emergency equipment must be readily accessible. The final rule remains unchanged.

Various changes to part 121, since issuance of Notice 96–9, will have a small editorial effect on this amendment, but will not result in any substantive change to the requirements. There is also no change regarding which sections are affected.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no current or new requirements for information collection associated with this amendment.

International Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practical. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and the Joint Aviation Authorities regulations, where they exist, and has identified no differences in these amendments and the foreign regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards, and use them where appropriate as the basis for U.S. standards. Fourth, the Unfunded Mandates Act of 1995 requires agencies to prepare a written assessment of the costs and benefits, and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local, or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more (adjusted for inflation) in any one year.

In conducting these analyses, the FAA determined that this rule has benefits that justify the minimal incremental costs; will not have a significant impact on a substantial number of small entities; has no effect on trade-sensitive activity; and does not impose an unfunded mandate on State, local, or tribal government, or on the private sector.

The provisions of this rule reflect current industry practices. The primary potential benefit of the final rule is that it will require these current practices to be continued in the future. Alternatively, without this rule, the current safety practices could be reduced. A secondary benefit of the final rule will arise from clarifying existing rules. The prevalence of these industry practices indicates that airplane manufacturers and operators have determined that they are warranted means of enhancing passenger and flight attendant safety.

In the analysis for the NPRM, the FAA estimated *de minimis* costs, and requested documented cost information from the industry. The FAA did receive comments regarding costs. After reviewing these comments the FAA concludes the *de minimis* cost conclusion is appropriate. Provisions of this rule (such as emergency exit viewing windows, and interior cabin doors) apply only to future type-certificated aircraft. Given future design flexibility, costs are considered to be negligible. Other provisions (such as assist handles, emergency exit door latch open devices, and portable oxygen bottles) codify practices that are already being adopted by the entire industry. Even if an operator was not compliant, the costs of compliance are estimated to be less than $1000.

Costs and Benefits

The FAA believes that the certification of largely existing good industry practices ensures today's level of safety and will modestly improve future levels of air safety at minimal cost. The rule will codify current industry practices, an indication that aircraft manufacturers and airlines have determined that the rule, even before its publication, is aimed at enhancing passenger and flight attendant survivability in case of an accident. The major benefit is to ensure that the existing level of safety is maintained because, without the rule, the safety standards could be relaxed at any time.

The final rule will impose minimal, if any, incremental compliance costs on existing airplanes and airplanes manufactured under existing type certificates because it will codify existing industry practices, and clarify FAA requirements concerning cabin configuration and equipment specifications. There is one exception. The final rule could impose some compliance costs on future part 25 type-certificated airplanes, arising from the requirement for a viewing window in each emergency exit door or adjacent bay. In order for a tailcone emergency exit to meet this requirement, considerable engineering redesign may be needed. The FAA specifically requested comments on this topic, but commenters only dealt with the inability to view the outside environment from the tailcone emergency exit, not from the cost of redesign. It is conceivable that, since the rule applies only to airplanes for which

an application for type certificate is made after the effective date, and no retrofit requirement is included, most future aircraft will not be equipped with a tailcone exit.

Another comment referenced the installation of interior doors. In this case, the argument was made that revenue would be lost by the aftermarket industry if interior doors could not be installed after purchase from the original equipment manufacturer. Since the requirement is not retrofit to the existing fleet, and the FAA will continue to entertain petitions for exemption where public interest is demonstrated for privately-owned airplanes, the rule will not dimish the earning potential of any firm engaged in installing doors in existing aircraft. Certain future unscheduled charter operators might be negatively affected, but since the rule applies only to future aircraft, the FAA cannot predict what cost will be encumbered given manufacturers' flexibility to design and customize new airplanes to meet customer needs.

Yet another comment was made by an aerospace industry association expressing concern over the possible increased cost of compliance with respect to oxygen equipment but providing no detail as to why they believe it would be the case. No operators objected because the majority, if not all, of the installations are already compliant with the rule (and if there are any that are not, the corrective action can be accomplished very easily)

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The Act establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will indeed have a significant impact, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify, and an regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. In this case, the FAA economic evaluation for the NPRM estimated that the rule will impose no, or *de minimis,* costs to the aviation industry as a whole. The FAA did receive comments regarding compliance costs. After reviewing these comments the FAA determined that the *de minimis* costs conclusion remains appropriate. Therefore, the FAA certifies that there will be no significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule will have, at most, minimal impact on the competitive posture of either U.S. carriers doing business in foreign countries or foreign carriers doing business in the United States. This assessment is based on the fact that this rule will have, at most, minimal impact on existing part 121 operators, since they are already in compliance. These requirements, therefore, will not impose a competitive disadvantage for U.S. air carriers operating overseas or for foreign carriers operating in the United States. Finally, the certification requirement of this rule will not constitute a barrier to international trade because part 25 certificated aircraft currently manufactured are already in compliance with this rule.

Unfunded Mandates Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub.L.104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,700,000 (adjusted for inflation to calendar year 2003 levels by the Consumer Price Index for All Urban Consumers). Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate''. A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals or rules.

This final rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the State, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she

considers appropriate. Because this rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect interstate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 121

Aviation safety, Safety, Air carrier, Air traffic control, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Airports, Airspace, Cargo, Chemicals, Children, Narcotics, Flammable materials, Handicapped, Hazardous materials, Common carriers.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends parts 25 and 121 of Title 14 of the Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. Section 25.809 is amended by revising paragraph (a), and by adding a new paragraph (i) to read as follows:

§ 25.809 Emergency exit arrangement.

(a) Each emergency exit, including each flightcrew emergency exit, must be a moveable door or hatch in the external walls of the fuselage, allowing an unobstructed opening to the outside. In addition, each emergency exit must have means to permit viewing of the conditions outside the exit when the exit is closed. The viewing means may be on or adjacent to the exit provided no obstructions exist between the exit and the viewing means. Means must also be provided to permit viewing of the likely areas of evacuee ground contact. The likely areas of evacuee ground contact must be viewable during all lighting conditions with the landing gear extended as well as in all conditions of landing gear collapse.

* * * * *

(i) Each emergency exit must have a means to retain the exit in the open position, once the exit is opened in an emergency. The means must not require separate action to engage when the exit is opened, and must require positive action to disengage.

■ 3. Section § 25.812 is amended by revising paragraphs (g)(1)(ii), (g)(2), and (h) introductory text to read as follows:

§ 25.812 Emergency lighting.

* * * * *

(g) * * *

(1) * * *

(i) * * *

(ii) Not less than 0.05 foot-candle (measured normal to the direction of the incident light) for a minimum width of 42 inches for a Type A overwing emergency exit and two feet for all other overwing emergency exits along the 30 percent of the slip-resistant portion of the escape route required in § 25.810(c) that is farthest from the exit; and

* * * * *

(2) At each non-overwing emergency exit not required by § 25.810(a) to have descent assist means the illumination must be not less than 0.03 foot-candle (measured normal to the direction of the incident light) on the ground surface with the landing gear extended where an evacuee is likely to make first contact with the ground outside the cabin.

(h) The means required in §§ 25.810(a) and (d) to assist the occupants in descending to the ground must be illuminated so that the erected assist means is visible from the airplane.

* * * * *

■ 4. Section 25.813 is amended by revising paragraphs (b)(1), (b)(2) and (b)(3), by adding new paragraphs (b)(4), (b)(5) and (b)(6) and by revising paragraphs (e) and (f) to read as follows:

§ 25.813 Emergency exit access.

* * * * *

(b) * * *

(1) Each assist space must be a rectangle on the floor, of sufficient size to enable a crewmember, standing erect, to effectively assist evacuees. The assist space must not reduce the unobstructed width of the passageway below that required for the exit.

(2) For each Type A or B exit, assist space must be provided at each side of the exit regardless of whether an assist means is required by § 25.810(a).

(3) For each Type C, I or II exit installed in an airplane with seating for more than 80 passengers, an assist space must be provided at one side of the passageway regardless of whether an assist means is required by § 25.810(a).

(4) For each Type C, I or II exit, an assist space must be provided at one side of the passageway if an assist means is required by § 25.810(a).

(5) For any tailcone exit that qualifies for 25 additional passenger seats under the provisions of § 25.807(d)(3)(ii), an assist space must be provided, if an assist means is required by § 25.810(a).

(6) There must be a handle, or handles, at each assist space, located to enable the crewmember to steady himself or herself:

(i) While manually activating the assist means (where applicable) and,

(ii) While assisting passengers during an evacuation.

* * * * *

(e) No door may be installed between any passenger seat that is occupiable for takeoff and landing and any passenger emergency exit, such that the door crosses any egress path (including aisles, crossaisles and passageways).

(f) If it is necessary to pass through a doorway separating any crewmember seat (except those seats on the flightdeck), occupiable for takeoff and landing, from any emergency exit, the door must have a means to latch it in the open position. The latching means must be able to withstand the loads imposed upon it when the door is subjected to the ultimate inertia forces, relative to the surrounding structure, listed in § 25.561(b).

§ 25.819 [Amended]

■ 5.–6. Section § 25.853 is amended by revising paragraph (f) to read as follows:

§ 25.853 Compartment interiors.

* * * * *

(f) Smoking is not allowed in lavatories. If smoking is allowed in any area occupied by the crew or passengers, an adequate number of self-contained, removable ashtrays must be provided in designated smoking sections for all seated occupants.

* * * * *

■ 7. The introductory text in § 25.855 is revised to read as follows:

§ 25.855 Cargo or baggage compartments.

For each cargo or baggage compartment, the following apply:

* * * * *

■ 8. Section § 25.1411 is amended by revising paragraph (c) to read as follows:

§ 25.1411 General.

* * * * *

(c) *Emergency exit descent device.* The stowage provisions for the emergency exit descent devices required by § 25.810(a) must be at each exit for which they are intended.

* * * * *

■ 9. Section 25.1447 is amended by revising paragraph (c)(4) to read as follows:

§ 25.1447 Equipment standards for oxygen dispensing units.

* * * * *

(c) * * *

(4) Portable oxygen equipment must be immediately available for each cabin attendant. The portable oxygen equipment must have the oxygen dispensing unit connected to the portable oxygen supply.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 10. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 11. Section 121.310 is amended by revising paragraph (f)(2), by redesignating paragraph (f)(6) as (f)(7), by adding a new paragraph (f)(6), by redesignating existing paragraph (l) as paragraph (n), by adding a new paragraph (l), and by republishing newly redesignated paragraphs (f)(7) and (n) to read as follows:

§ 121.310 Additional emergency equipment.

* * * * *

(f) * * *

(2) For each Type I or Type II emergency exit equipped with an assist means, there must be enough space next to the exit to allow a crewmember to assist in the evacuation of passengers without reducing the unobstructed width of the passageway below that required in paragraph (f)(1) of this section. In addition, all airplanes manufactured on or after November 26, 2008 must comply with the provisions of §§ 25.813(b)(1), (b)(2), (b)(3) and (b)(4) in effect on November 26, 2004. However, a deviation from this requirement may be authorized for an airplane certificated under the provisions of part 4b of the Civil Air Regulations in effect before December 20, 1951, if the Administrator finds that special circumstances exist that provide an equivalent level of safety.

* * * * *

(6) No person may operate an airplane manufactured after November 27, 2006, that incorporates a door installed between any passenger seat occupiable for takeoff and landing and any passenger emergency exit, such that the door crosses any egress path (including aisles, crossaisles and passageways).

(7) If it is necessary to pass through a doorway separating any seat (except those seats on the flightdeck), occupiable for takeoff and landing, from an emergency exit, the door must have a means to latch it in the open position, and the door must be latched open during each takeoff and landing. The latching means must be able to withstand the loads imposed upon it when the door is subjected to the ultimate inertia forces, relative to the surrounding structure, listed in § 25.561(b) of this chapter.

* * * * *

(l) *Emergency exit features.*

(1) Each transport category airplane manufactured after *November 26, 2007* must comply with the provisions of § 25.809(i) and

(2) After November 26, 2007 each transport category airplane must comply with the provisions of § 25.813(b)(6)(ii) in effect on November 26, 2007.

(m) * * *

(n) *Portable lights.* No person may operate a passenger-carrying airplane unless it is equipped with flashlight stowage provisions accessible from each flight attendant seat.

■ 12. Section 121.333 is amended by revising paragraph (d) as follows:

§ 121.333 Supplemental oxygen for emergency descent and for first aid; turbine engine powered airplanes with pressurized cabins.

* * * * *

(d) *Use of portable oxygen equipment by cabin attendants.* After November 28, 2005 each mask used for portable oxygen equipment must be connected to its oxygen supply. Above flight level 250, one of the following is required:

(1) Each attendant shall carry portable oxygen equipment with a 15 minute supply of oxygen; or

(2) There must be sufficient portable oxygen equipment (including masks and spare outlets) distributed throughout the cabin so that such equipment is immediately available to each attendant, regardless of their location in the cabin; or

(3) There are sufficient spare outlets and masks distributed throughout the cabin to ensure immediate availability of oxygen to each cabin attendant, regardless of their location in the cabin.

* * * * *

Issued in Washington, DC, on October 15, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–23862 Filed 10–26–04; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
October 27, 2004

Part IV

The President

Federal Register
Vol. 69, No. 207
Wednesday, October 27, 2004

Presidential Documents

Title 3—

The President

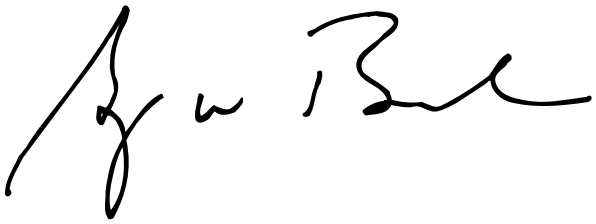
Presidential Determination No. 2005–01 of October 7, 2004

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $8 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet unexpected urgent refugee and migration needs related to the Burundi refugee repatriation and reintegration. These funds may be used, as appropriate, to provide contributions to international, governmental, and nongovernmental organizations, and, as necessary, for administrative expenses of the Bureau of Population, Refugees, and Migration.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to arrange for the publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 7, 2004.

[FR Doc. 04–24130
Filed 10–26–04; 8:45 am]
Billing code 4710–10–P

Presidential Documents

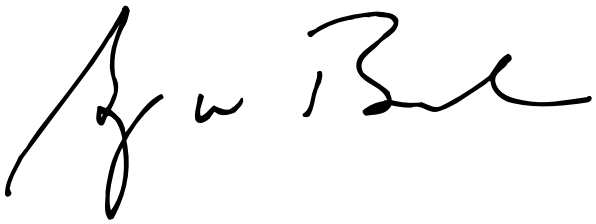
Presidential Determination No. 2005–02 of October 14, 2004

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority and conditions contained in section 534(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, Public Law 108–199, as provided for in the Joint Resolution Making Continuing Appropriations for the Fiscal Year 2005, and for other Purposes (Public Law 108–309), I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 14, 2004.

[FR Doc. 04–24131
Filed 10–26–04; 8:45 am]
Billing code 4710–10–P

Presidential Documents

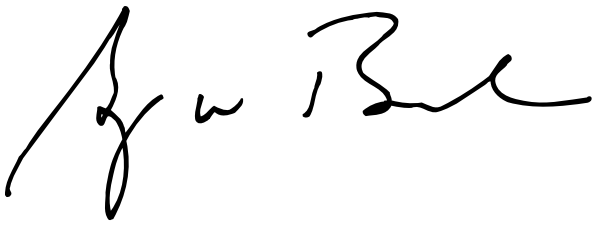
Presidential Determination No. 2005–03 of October 16, 2004

Provision of U.S. Drug Interdiction Assistance to the Government of Brazil

Memorandum for the Secretary of State, [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Brazil, that: (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register** and to notify the Congress of this determination.



THE WHITE HOUSE,
Washington, October 16, 2004.

[FR Doc. 04–24132
Filed 10–26–04; 8:45 am]
Billing code 4710–10–P

Federal Register

Wednesday,
October 27, 2004

Part V

The President

Proclamation 7837—United Nations Day, 2004

Federal Register
Vol. 69, No. 207
Wednesday, October 27, 2004

Presidential Documents

Title 3—

The President

Proclamation 7837 of October 24, 2004

United Nations Day, 2004

By the President of the United States of America

A Proclamation

On United Nations Day, we commemorate the founding of the United Nations in 1945 and recognize its many contributions to advancing peace and human rights around the world.

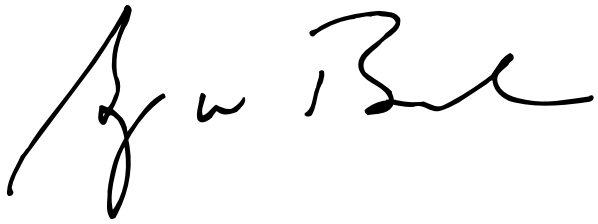
Our Declaration of Independence and the United Nations' Universal Declaration of Human Rights proclaim the equal value and dignity of every human life. That dignity is honored by the rule of law, limits on the power of the state, respect for women, protection of private property, free speech, equal justice, and religious tolerance. These founding documents affirm that the bright line between justice and injustice is the same in every age, every culture, and every nation.

Today, the United Nations is helping advance these ideals in many places around the globe. The U.N. assisted Afghanistan in making history when Afghan women and men voted in a democratic Presidential election earlier this month. In Sudan, Liberia, Haiti, and other nations, the U.N. has been working to bring security, stability, and humanitarian assistance to people in need. From Africa to the Caribbean to Asia, the U.N. is helping to turn societies away from old conflicts, overcome persistent poverty, and fight HIV/AIDS and other diseases.

The United States remains committed to the high ideals of the U.N. as stated in its charter: ''To save succeeding generations from the scourge of war . . . to reaffirm faith in fundamental human rights . . . and to promote social progress and better standards of life in larger freedom.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 2004, as United Nations Day. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States to honor the observance of United Nations Day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–24172
Filed 10–26–04; 9:08 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 69, No. 207

Wednesday, October 27, 2004

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (orchange settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

62400, 62566, 62567, 62570, 62571
71 .....59129, 59303, 60284, 60285, 60286, 60956, 61439, 61760, 62401, 62402, 62403, 62404
91.....59752, 60534
95.....61997
97.....61146, 61592
121.....62778
150.....61438

Proposed Rules:
39 .....59147, 59148, 59151, 59153, 59557, 59559, 59837, 60098, 60100, 60104, 60106, 60568, 60971, 61611, 62003, 62005, 62421, 62424, 62623, 62625, 62627, 62629
71.....58859, 59756
73.....58860
93.....61708
95.....61128
97.....59756

15 CFR

730.....60545
734.....60545
744.....59303
746.....60545
770.....60545
772.....60545
774.....60545

Proposed Rules:
732.....60829
736.....60829
740.....60829
744.....60829
752.....60829
764.....60829
772.....60829
904.....60569
995.....61165
996.....61172

16 CFR

305.....62180

Proposed Rules:
642.....58861
698.....58861

17 CFR

1.....59544
211.....59130
232.....60287
240.....60287
249.....60287

Proposed Rules:
171.....62226
228.....59094, 62426
229.....59094, 62426
232.....59094, 62426
240.....59094, 62426
249.....59094, 62426
270.....59094, 62426

18 CFR

Proposed Rules:
35.....61180

19 CFR

191.....60082

Proposed Rules:
133.....59562, 60936

20 CFR

404.....60224, 61594
408.....60224
416.....60224, 61594

21 CFR

74.....60307
350.....61148
510.....60811, 62406
520 .....59131, 60547, 62180, 62406
522.....60308, 62406
524.....62181
529.....61761, 61999
556.....60308
558.....60547, 62406
888.....59132

Proposed Rules:
16.....60108
118.....60108
361.....59569

22 CFR

51.....60811, 61597
202.....61716
205.....61716
211.....61716
226.....61716

23 CFR

Proposed Rules:
655.....62007
658.....62426

24 CFR

7.....62172
954.....62164
1003.....62164

25 CFR

170.....60957

26 CFR

1 .....60222, 61309, 61761, 62181
602.....61309, 62181

Proposed Rules:
1.....58873, 62631
25.....62228, 62631
48.....59572
301.....62229

28 CFR

Proposed Rules:
16.....61323

29 CFR

4022.....61150
4044.....61150

Proposed Rules:
1910.....59306
1915.....59306
1917.....59306
1918.....59306
1926.....59306
2700.....62632
2701.....62632
2702.....62632
2704.....62632

30 CFR

914.....58830

Proposed Rules:
906.....58873

31 CFR

240.....61564

Proposed Rules:
344.....62229

32 CFR

199.....60547
322.....62407
706 .....61311, 61312, 61313, 61314, 61316, 61597

33 CFR

100 .....59793, 59795, 59797, 61440, 61442, 62574
117 .....59135, 59136, 60555
151.....60309
165 .....58833, 58834, 59136, 59799, 59801, 59803, 59806, 59808, 62408, 62574

Proposed Rules:
110.....60592
117 .....60595, 60597, 61445, 61770
165.....60600, 62427

34 CFR

Proposed Rules:
75.....61556
76.....61556
108.....61556
225.....62008

36 CFR

242.....60957

Proposed Rules:
1270.....58875

37 CFR

2.....59809
202.....62411
270.....59648

Proposed Rules:
252.....61325
257.....61325
259.....61325

38 CFR

1.....60083, 62188
2.....62188
3.....60083
17.....62204
21 .....62205, 62206, 62209

Proposed Rules:
3.....62229
5.....59072, 61915
20.....62229

39 CFR

20.....59545
111 .....59139, 59545, 62578
501.....60090, 61085

Proposed Rules:
111.....62635

40 CFR

35.....59810
52 .....59546, 59812, 60962, 61762, 61766, 62210, 62583, 62585, 62588, 62589, 62591
60.....61762
63.....58837, 60813
81 .....61766, 62210, 62591
180 .....60820, 61599, 62596, 62602
261.....60557
262.....62217
271 .....59139, 60091, 60964
300.....58839

Proposed Rules:
9.....60320
23.....60320
52 .....59572, 59839, 60328, 60974, 62636, 62637
63.....60837
81.....60328, 62637
271.....60975
81.....60328
163.....60320
177.....60320
178.....60320
179.....60320
180.....59843, 60320
261.....59156
262.....62237
271 .....59165, 60110, 60975

42 CFR

71.....59144
403.....60242
412.....60242
413.....60242
418.....60242
460.....60242
480.....60242
482.....60242
483.....60242
484.....62124
485.....60242
489.....60242

43 CFR

Proposed Rules:
10.....61613

44 CFR

64.....60309, 61444
67.....61445

Proposed Rules:
67 .....61457, 61460, 62013

45 CFR

303.....62413
2251.....60094
2252.....60094
2253.....60094

Proposed Rules:
Ch. XXV.....60603

46 CFR

232.....61448
281.....61448
287.....61448
295.....61448
298.....61448
310 .....61448, 61452, 61605
355.....61448
380.....61448
390.....61448

47 CFR

0.....59145
1 .....58840, 59145, 61317
15.....59500, 62615
27.....59500
43.....62225
54.....59145, 61999
64 .....60311, 61152, 62225
73 .....58840, 59500, 60316, 60560, 60561, 62225
74.....62615
78.....62615
90.....59500, 60561

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 27, 2004

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Deltamethrin; published 10-27-04
- L-glutamic acid and gamma aminobutyric acid; published 10-27-04

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
- Approved spent fuel storage casks; list; published 8-13-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Bombardier; published 9-22-04
- Empresa Brasileira de Aeronautica, S.A. (EMBRAER); published 9-22-04
- McDonnell Douglas; published 9-22-04
- Rolls-Royce plc; published 9-22-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (sweet) grown in—
- Washington; comments due by 11-4-04; published 10-5-04 [FR 04-22303]

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Lamb promotion, research, and information; referendum; comments due by 11-4-04; published 10-15-04 [FR 04-23110]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:
- Birds, rats, and mice; regulations and standards; comments due by 11-1-04; published 7-21-04 [FR 04-16541]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Special programs:
- Farm Security and Rural Investment Act of 2002; implementation—
  - Renewable Energy Systems and Energy Efficiency Improvements, Grant, Guaranteed Loan, and Direct Loan Program; comments due by 11-4-04; published 10-5-04 [FR 04-22093]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Grants:
- Household Water Well System Program; comments due by 11-5-04; published 10-6-04 [FR 04-22447]
- Revolving Fund Program; revolving funds for financing water and wastewater projects; comments due by 11-5-04; published 10-6-04 [FR 04-22445]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands king and tanner crab; comments due by 11-1-04; published 9-1-04 [FR 04-19971]
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 11-1-04; published 10-6-04 [FR 04-22477]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:
- Ownership by contractor; patent rights; comments due by 11-1-04; published 9-30-04 [FR 04-21853]

Federal Acquisition Regulation (FAR):
- SDB and HUBZone price evaluation factor; applicability; comments due by 11-1-04; published 9-2-04 [FR 04-20003]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:
- Test procedures and efficiency standards—
  - Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

Practice and procedure:
- Regional transmission organizations and independent system operators; financial reporting, cost accounting, oversight, and recovery practices; comments due by 11-4-04; published 9-29-04 [FR 04-21760]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Arizona; comments due by 11-1-04; published 9-30-04 [FR 04-21824]
- Colorado; comments due by 11-1-04; published 9-30-04 [FR 04-21926]
- New York; comments due by 11-5-04; published 10-6-04 [FR 04-22484]
- Virginia; comments due by 11-5-04; published 10-6-04 [FR 04-22359]
- Wisconsin; comments due by 11-4-04; published 10-5-04 [FR 04-22250]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:
- Nebraska; comments due by 11-3-04; published 10-4-04 [FR 04-22252]

Pesticide programs:
- Pesticides use under emergency conditions; emergency exemption process; revisions; comments due by 11-2-04; published 9-3-04 [FR 04-20038]

Solid wastes:
- Hazardous waste identification and listing—
  - Exclusions; comments due by 11-3-04; published 10-4-04 [FR 04-22235]

Water pollution; effluent guidelines for point source categories:
- Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FARM CREDIT ADMINISTRATION

Farm credit system:
- Administrative expenses; loan policies and operations, funding and fiscal affairs; disclosure to shareholders; capital adequacy risk-weighting—
  - Capital standards and requirements; comments due by 11-4-04; published 8-6-04 [FR 04-17570]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services; comments due by 11-1-04; published 9-1-04 [FR 04-19955]

Common carriers:
- Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services
  - Correction; comments due by 11-1-04; published 9-17-04 [FR 04-21006]

Television broadcasting:
- Cable Television Consumer Protection Act—
  - Cable television inside wiring rules; comments

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 5122/P.L. 108–349
To amend the Congressional Accountability Act of 1995 to permit members of the Board of Directors of the Office of Compliance to serve for 2 terms. (Oct. 21, 2004; 118 Stat. 1389)

S. 33/P.L. 108–350
To authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites. (Oct. 21, 2004; 118 Stat. 1390)

S. 1791/P.L. 108–351
To amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes. (Oct. 21, 2004; 118 Stat. 1394)

S. 2178/P.L. 108–352
National Park System Laws Technical Amendments Act of 2004 (Oct. 21, 2004; 118 Stat. 1395)

S. 2415/P.L. 108–353
To designate the facility of the United States Postal Service located at 4141 Postmark Drive, Anchorage, Alaska, as the ''Robert J. Opinsky Post Office Building''. (Oct. 21, 2004; 118 Stat. 1399)

S. 2511/P.L. 108–354
Chimayo Water Supply System and Espanola Filtration Facility Act of 2004 (Oct. 21, 2004; 118 Stat. 1400)

S. 2634/P.L. 108–355
Garrett Lee Smith Memorial Act (Oct. 21, 2004; 118 Stat. 1404)

S. 2742/P.L. 108–356
To extend certain authority of the Supreme Court Police, modify the venue of prosecutions relating to the Supreme Court building and grounds, and authorize the acceptance of gifts to the United States Supreme Court. (Oct. 21, 2004; 118 Stat. 1416)

Last List October 21, 2004

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.